

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NORTH CAROLINA
3 WESTERN DIVISION

4 UNITED STATES OF AMERICA,)
5)
6 PETITIONER,)
7 VS) CASE NO. 5:07-HC-2042-FL
8 BYRON NEIL ANTONE,)
9 RESPONDENT.)

10
11
12 BENCH TRIAL

13 OCTOBER 21, 2011

14 HONORABLE JAMES E. GATES, PRESIDING
15

16 APPEARANCES:

17 MR. JOSHUA ROYSTER
18 ASSISTANT UNITED STATES ATTORNEY
19 310 NEW BERN AVENUE
RALEIGH, NC 27601
(FOR THE GOVERNMENT)

20 MR. MICHAEL BREDENBERG
21 ASSISTANT UNITED STATES ATTORNEY
22 310 NEW BERN AVENUE
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(FOR THE GOVERNMENT)

23 MR. JOSEPH ROSS
24 ASSISTANT FEDERAL PUBLIC DEFENDER
25 150 FAYETTEVILLE STREET
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(FOR THE DEFENDANT)

1 APPEARANCES :

2 MR. ROBERT WATERS
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4 150 FAYETTEVILLE STREET
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8 MS. SONYA ALLEN
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24 SHARON K. KROEGER, COURT REPORTER
25 MACHINE SHORTHAND REPORTER, COMPUTER AIDED TRANSCRIPTION

1 THE COURT: GOOD MORNING, FOLKS.

2 MR. ROYSTER: GOOD MORNING, YOUR HONOR.

3 MR. ROSS: GOOD MORNING, YOUR HONOR.

4 THE COURT: ANY HOUSEKEEPING MATTERS WE NEED
5 TO DISCUSS THIS MORNING, MR. ROYSTER?

6 MR. ROYSTER: NOT FROM THE GOVERNMENT.

7 THE COURT: MR. ROSS?

8 MR. ROSS: NO, YOUR HONOR.

9 THE COURT: VERY GOOD. I BELIEVE THEN WE ARE
10 STILL WITH THE GOVERNMENT'S CASE, AND MR. ROYSTER, I
11 WOULD BE HAPPY TO HEAR ANY FURTHER EVIDENCE THE
12 GOVERNMENT CARES TO OFFER.

13 MR. BREDENBERG: YOUR HONOR, MIKE BREDENBERG.

14 THE COURT: YES, SIR.

15 MR. BREDENBERG: THE GOVERNMENT CALLS DR.
16 MANUEL GUTIERREZ.

17 DR. MANUEL GUTIERREZ, CALLED AS A WITNESS,
18 HAVING BEEN FIRST DULY SWORN, ON HIS OATH,
TESTIFIED AS FOLLOWS:

19 THE CLERK: PLEASE STATE YOUR NAME FOR THE
20 RECORD.

21 THE WITNESS: MY NAME IS MANUEL GUTIERREZ.

22 DIRECT EXAMINATION BY MR. BREDENBERG:

23 Q GOOD MORNING, DR. GUTIERREZ.

24 A GOOD MORNING.

25 Q WILL YOU PLEASE STATE YOUR OCCUPATION AND EMPLOYER

1 AND LOCATION OF EMPLOYMENT FOR THE RECORD.

2 A I AM A FORENSIC PSYCHOLOGIST AND I AM EMPLOYED BY THE
3 FEDERAL BUREAU OF PRISONS AT THE FEDERAL CORRECTIONAL
4 INSTITUTION IN BUTNER, NORTH CAROLINA.

5 Q CAN YOU I TURN YOUR ATTENTION TO GOVERNMENT'S EXHIBIT
6 4 IN THE NOTEBOOK. CAN YOU IDENTIFY THAT, PLEASE?

7 A YES. THAT IS MY CURRICULUM VITAE.

8 Q IS THAT CURRENT?

9 A I BELIEVE I HAVE A MORE UPDATED VERSION OF THE VITAE
10 SINCE THIS ONE, BUT THIS IS PERHAPS JUST TWO OR THREE
11 MONTHS OLD.

12 Q WHAT WOULD BE THE DIFFERENCES?

13 A THE DIFFERENCES WOULD BE A COUPLE OF ADDITIONAL
14 TRAININGS THAT I HAVE ATTENDED SINCE THE SPRING OF 2011.

15 Q ACCORDING TO YOUR C.V., YOU HAVE A DOCTORATE DEGREE
16 IN PSYCHOLOGY?

17 A THAT'S CORRECT.

18 Q WHAT OTHER DEGREES DO YOU HAVE?

19 A I ALSO HAVE A BACHELOR OF SCIENCE FROM JAMES MADISON
20 UNIVERSITY, AND A MASTER OF ARTS IN EXPERIMENTAL
21 PSYCHOLOGY FROM GEORGE MASON UNIVERSITY, AND THE
22 DOCTORATE FROM NOVA SOUTHEASTERN UNIVERSITY.

23 Q WHAT IS EXPERIMENTAL PSYCHOLOGY?

24 A EXPERIMENTAL PSYCHOLOGY IS A BRANCH OF PSYCHOLOGY
25 THAT IS MORE FOCUSED ON HUMAN BEHAVIOR, PHYSIOLOGICAL

1 REACTIONS AND HOW THEY EFFECT PSYCHOLOGICAL AND
2 PHYSIOLOGICAL RESPONSES.

3 Q DOES THAT APPLY TO YOUR CURRENT POSITION?

4 A NOT DIRECTLY. IT WAS MORE LOOKING AT RESPONSES IN
5 ANIMALS, DOING SOME TESTING WITH ANIMALS, AND THEN ALSO
6 SOME TESTING WITH HUMANS, BUT IT WASN'T CLINICAL IN
7 NATURE.

8 Q YOUR DOCTORATE DEGREE, IS THERE A SPECIALTY IN
9 CONNECTION WITH THAT?

10 A THE SPECIALTY WOULD BE IN CLINICAL PSYCHOLOGY.

11 Q AND DOES YOUR CURRENT -- WELL, DO YOU CURRENTLY HOLD
12 A LICENSE TO PRACTICE PSYCHOLOGY?

13 A YES, I DO.

14 Q WHAT STATE OR STATES?

15 A CURRENTLY LICENSED IN NORTH CAROLINA.

16 Q LET'S TALK A LITTLE ABOUT YOUR CURRENT JOB. HOW LONG
17 HAVE YOU HAD THAT POSITION?

18 A I HAVE BEEN AT BUTNER FOR JUST OVER FIVE YEARS.

19 Q AND WHAT DO YOU DO SPECIFICALLY AT BUTNER?

20 A SPECIFICALLY, I CONDUCT FORENSIC EVALUATIONS IN THE
21 AREA OF GENERAL FORENSICS, MEANING COMPETENCE TO STAND
22 TRIAL, CRIMINAL RESPONSIBILITY, THINGS OF THAT NATURE,
23 AND I ALSO CONDUCT EVALUATIONS FOR RISK ASSESSMENT
24 PURPOSES FOR INDIVIDUALS WHO ARE BEING CONSIDERED UNDER
25 THE ADAM WALSH LAW.

1 Q AND THAT IS A FEDERAL STATUTE?

2 A THAT'S CORRECT.

3 Q HOW LONG HAVE YOU BEEN DOING THE EVALUATIONS UNDER
4 THE ADAM WALSH LAW?

5 A I HAVE BEEN DOING THOSE FOR APPROXIMATELY FOUR AND
6 HALF YEARS.

7 Q WHAT PRIOR POSITIONS HAVE YOU HELD IN THE FIELD OF
8 PSYCHOLOGY?

9 A PRIOR TO MY EMPLOYMENT AT BUTNER, I WAS A FORENSIC
10 PSYCHOLOGIST AND A STAFF PSYCHOLOGIST AT THE FEDERAL
11 PRISON IN MIAMI, FLORIDA, AND I WAS THERE FOR
12 APPROXIMATELY FIVE YEARS.

13 Q AND AS A FORENSIC PSYCHOLOGIST THERE, WHAT DID YOU
14 DO?

15 A SIMILAR TO WHAT I DO NOW IN TERMS OF THOSE GENERAL
16 FORENSIC EVALUATIONS, COMPETENCY TO STAND TRIAL, CRIMINAL
17 RESPONSIBILITY, SOME GENERAL RISK ASSESSMENTS FOR INMATES
18 THAT HAD BEEN CHARGED WITH CRIMES BUT THAT WAS BEFORE THE
19 ADAM WALSH LAW, SO NONE OF THOSE PERTAINED TO CIVIL
20 COMMITMENT, PER SE.

21 Q AND HAVE YOU HAD ANY OTHER POSITIONS WHERE YOU HAVE
22 CONDUCTED FORENSIC EVALUATIONS?

23 A AS PART OF MY INTERNSHIP, MY -- THAT WAS PART OF MY
24 DOCTORAL PROGRAM, I COMPLETED AN INTERNSHIP AT THE
25 FEDERAL PRISON IN PETERSBURG, VIRGINIA, AND THE FOCUS OF

1 THAT WAS CONDUCTING FORENSIC EVALUATIONS.

2 Q DID YOU ALSO WORK IN THE STATE HOSPITAL IN VIRGINIA?

3 A I DID.

4 Q DID YOU CONDUCT FORENSIC EVALUATIONS THERE?

5 A I CONDUCTED EVALUATIONS OF INDIVIDUALS WHO WERE IN A
6 SECURE FORENSIC FACILITY, BUT THEY WEREN'T COMPETENCY OR
7 RESPONSIBILITY EVALUATIONS. THEY WERE MORE GENERAL
8 EVALUATIONS FOR TREATMENT PLANNING PURPOSES.

9 Q IN YOUR JOBS WITH THE BUREAU OF PRISONS, ABOUT HOW
10 MANY FORENSIC EVALUATIONS HAVE YOU PREPARED?

11 A I WOULD SAY OVER 400.

12 Q AND THE PURPOSES OF THOSE EVALS WERE?

13 A CRIMINAL RESPONSIBILITY, COMPETENCE TO STAND TRIAL,
14 AND ALSO ADAM WALSH EVALUATIONS, 4248 EVALUATIONS.

15 A AND YOU STATED THAT YOUR CURRENT DUTIES DO INVOLVE
16 EVALUATIONS OF SEX OFFENDERS UNDER THE ADAM WALSH ACT?

17 A THAT IS CORRECT.

18 Q APPROXIMATELY HOW MANY EVALUATIONS HAVE YOU CONDUCTED
19 UNDER THAT ACT?

20 A I HAVE CONDUCTED 47 EVALUATIONS UNDER THAT ACT.

21 Q WHAT PERIOD OF TIME HAS THAT BEEN?

22 A THAT HAS BEEN SINCE EARLY 2007 UNTIL THE PRESENT.

23 Q DO YOU HAPPEN TO KNOW HOW MANY OF THOSE 47 EVALS YOU
24 DETERMINED THAT THE INDIVIDUAL MET CRITERIA AND HOW MANY
25 YOU DETERMINED THAT DIDN'T MEET CRITERIA?

1 A YES. OF THOSE 47, IT WAS MY OPINION THAT 24 OF THE
2 INDIVIDUALS MET CRITERIA FOR CIVIL COMMITMENT UNDER THE
3 ADAM WALSH LAW AND 23 DID NOT.

4 Q DO YOU USE ACTUARIAL INSTRUMENTS AS PART OF YOUR 4248
5 EVALUATIONS?

6 A YES, I DO.

7 Q WHICH EVALUATIONS OR WHICH MEASURES DO YOU USE?

8 A I HAVE USED THE STATIC-99. MORE RECENTLY I HAVE BEEN
9 USING THE STATIC-99R, AND IN THE PAST, I ALSO USED THE
10 RRASOR, THE RAPID RISK ASSESSMENT FOR SEX OFFENDER
11 RECIDIVISM.

12 Q AND YOU HAVE RECEIVED TRAINING UNDER THOSE MEASURES?

13 A YES, I HAVE.

14 Q HAVE YOU EVER TESTIFIED IN COURT AS AN EXPERT IN
15 FORENSIC PSYCHOLOGY?

16 A YES, I HAVE.

17 Q HOW MANY TIMES?

18 A APPROXIMATELY 40 TIMES.

19 Q HAS THAT BEEN FEDERAL COURT?

20 A YES. ALL OF THOSE HAVE BEEN IN FEDERAL COURT.

21 Q AND HAVE YOU EVER TESTIFIED IN A 4248 PROCEEDING?

22 A NO, I HAVE NOT.

23 Q THIS WILL BE YOUR FIRST?

24 A YES.

25 MR. BREDEBERG: YOUR HONOR, AT THIS TIME WE

1 WOULD PROFFER DR. GUTIERREZ AS AN EXPERT IN THE FIELD OF
2 FORENSIC PSYCHOLOGY.

3 THE COURT: THANK YOU, SIR. MR. ROSS.

4 MR. ROSS: NO OBJECTION.

5 THE COURT: THE COURT RECOGNIZES DR. GUTIERREZ
6 AS AN EXPERT IN THE FIELD OF FORENSIC PSYCHOLOGY.

7 MR. BREDEBERG: THANK YOU, YOUR HONOR.

8 Q DR. GUTIERREZ, ARE YOU FAMILIAR WITH THE RESPONDENT,
9 MR. ANTONE?

10 A YES, I AM.

11 Q HOW DO YOU KNOW HIM?

12 A I HAVE HAD OCCASION TO MEET HIM SINCE HIS DETAINMENT
13 AT THE FEDERAL CORRECTIONAL INSTITUTION AT BUTNER. THERE
14 HAVE BEEN THREE OCCASIONS IN WHICH I HAVE WRITTEN REPORTS
15 TO ADDRESS HIS SEXUAL DANGEROUSNESS.

16 Q AND WHEN WAS THE FIRST OCCASION?

17 A THE FIRST OCCASION WAS IN FEBRUARY OF 2007.

18 Q AND WHAT WAS THE PURPOSE OF THAT?

19 A THE PURPOSE OF THAT WAS TO CONDUCT A PRECERTIFICATION
20 REPORT. THE PRECERTIFICATION REPORT WAS WRITTEN AND
21 FORWARDED TO OUR CENTRAL OFFICE IN WASHINGTON, D.C., AND
22 IT WAS THE CERTIFICATION REVIEW PANEL THAT ULTIMATELY
23 MADE THE DECISION TO CERTIFY MR. ANTONE.

24 Q AND IN THAT PRECERTIFICATION, WOULD YOU CONSIDER THAT
25 TO BE SORT OF A PRELIMINARY REPORT?

1 A YES.

2 Q AND IN CONDUCTING THAT PRELIMINARY REPORT, DID YOU
3 HAVE AN INTERVIEW WITH MR. ANTONE?

4 A I DID NOT INTERVIEW MR. ANTONE. I MET WITH HIM
5 BRIEFLY TO ADVISE HIM THAT I WOULD BE WRITING THIS REPORT
6 AND I ASKED HIM IF HE WANTED TO PARTICIPATE IN AN
7 INTERVIEW. HE DECLINED AT THAT TIME.

8 Q DID YOU -- WERE YOU ABLE TO COME UP WITH A DIAGNOSIS
9 IN THAT PARTICULAR REPORT?

10 A I DID.

11 Q AND I WILL REFER YOU TO RESPONDENT'S EXHIBIT NUMBER
12 4, WHICH IS AT THE BACK, SORT OF THE BACK, PAGE 4 OF THAT
13 EXHIBIT?

14 A YES.

15 Q THE BOTTOM, IS THAT YOUR DIAGNOSIS AREA?

16 A YES, IT IS.

17 Q AND WHAT DID YOU DIAGNOSE HIM WITH AT THAT POINT?

18 A I DIAGNOSED MR. ANTONE WITH POLYSUBSTANCE DEPENDENCE
19 IN A CONTROLLED ENVIRONMENT, PARAPHILIA NOT OTHERWISE
20 SPECIFIED, PROVISIONAL, AND ANTISOCIAL PERSONALITY
21 DISORDER.

22 Q AND WHAT DOES THE QUALIFIER PROVISIONAL MEAN?

23 A PROVISIONAL MEANS THAT AT THE TIME THE EVALUATOR DOES
24 NOT HAVE ENOUGH INFORMATION TO FORMALLY OR FULLY ASSIGN
25 THE DIAGNOSIS, SO THE DSM-IV-TR INDICATES THAT IN THOSE

1 CASES WHERE THERE MIGHT BE A LITTLE BIT OF DIAGNOSTIC
2 UNCERTAINTY OR THERE IS NOT ENOUGH INFORMATION TO FULLY
3 RENDER A DIAGNOSIS, THAT IT CAN BE PROVIDED ON A
4 PROVISIONAL BASIS.

5 Q WHY IS IT THAT AT THAT TIME THAT YOU DIDN'T HAVE
6 ENOUGH INFORMATION TO MAKE A FULL DIAGNOSIS?

7 A AT THAT TIME, I HAD VERY LITTLE IN TERMS OF
8 COLLATERAL RECORDS TO REVIEW. AT THAT TIME, I BELIEVE I
9 ONLY HAD HIS PRESENTENCE INVESTIGATION REPORT AND THE
10 ADDENDUM TO IT, AND THE BUREAU OF PRISONS RECORDS, BUT
11 THOSE WERE ALL THE RECORDS THAT I HAD TO REVIEW AT THAT
12 TIME.

13 Q AND SOME LATER DATE, DID YOU END UP WITH MORE, COMING
14 UP WITH MORE RECORDS?

15 A YES, I DID.

16 Q FLIP TO THE PAGE 6 OF THAT EXHIBIT. IS THERE
17 ANYTHING THAT YOU NOTE ABOUT THAT PAGE?

18 A I NOTICE THAT THERE IS NO SIGNATURE. MY SIGNATURE IS
19 NOT ON THAT PAGE.

20 Q DOES THAT HAVE ANY SIGNIFICANCE TO YOU?

21 A NO. I HAPPEN TO HAVE A SIGNED COPY OF IT. MY GUESS
22 WOULD BE THAT WHEN RECORDS WERE BEING COLLECTED FOR
23 DISCOVERY PURPOSES, THAT AN UNSIGNED COPY WAS
24 INADVERTENTLY PROVIDED INSTEAD OF THE SIGNED COPY.

25 Q BUT YOUR REVIEW OF THIS DOCUMENT, IS THAT, IN FACT,

1 ACCURATE AND CONSISTENT WITH YOUR SIGNED VERSION?

2 A YES.

3 Q PLEASE TURN TO GOVERNMENT'S EXHIBIT NUMBER 5.

4 THE COURT: DR. GUTIERREZ, LET ME ASK YOU MORE
5 SPECIFICALLY, IS THIS EXHIBIT, RESPONDENT'S NUMBER 4, IS
6 THAT, ASIDE FROM THE LACK OF A SIGNATURE OR A HAND
7 WRITTEN DATE ON PAGE 6, IS IT EXACTLY THE SAME AS YOUR
8 SIGNED COPY?

9 THE WITNESS: YES, YOUR HONOR, IT APPEARS TO
10 BE EXACTLY THE SAME.

11 THE COURT: OKAY. THANK YOU. MR. BREDENBERG.

12 MR. BREDENBERG: OKAY.

13 Q HAVE YOU FOUND GOVERNMENT'S EXHIBIT NUMBER 5?

14 A YES, I HAVE.

15 Q WHAT IS THAT?

16 A THAT IS MY FORENSIC EVALUATION FROM MAY OF 2007.

17 Q AND HOW DID YOU COME ABOUT DOING THAT EVALUATION?

18 A THAT EVALUATION WAS CONDUCTED PURSUANT TO A COURT
19 ORDER THAT WAS ISSUED BY JUDGE BRITT TO DETERMINE WHETHER
20 OR NOT MR. ANTONE MET CRITERIA FOR CIVIL COMMITMENT UNDER
21 4248.

22 Q WHAT KIND OF THINGS DID YOU CONSIDER WHEN CONDUCTING
23 THAT EVALUATION?

24 A I CONSIDERED MANY THINGS, INCLUDING THE DOCUMENTS I
25 HAD MENTIONED BEFORE, THE PRESENTENCE INVESTIGATION

1 REPORT, THE ADDENDUM TO IT, MR. ANTONE'S BUREAU OF
2 PRISONS RECORDS, MY PRIOR REPORT, THE PRECERTIFICATION
3 REPORT THAT HAD BEEN COMPLETED A FEW MONTHS EARLIER.

4 I ALSO HAD ACCESS TO RECORDS FROM THE TOHONO O'ODHAM
5 TRIBAL POLICE AS WELL AS THE JUDICIAL COURT FOR THE
6 TRIBE.

7 I ALSO HAD ACCESS TO INVESTIGATIVE REPORTS FROM THE
8 FEDERAL BUREAU OF INVESTIGATION AND OTHER JUDICIAL
9 RECORDS PERTAINING TO MR. ANTONE.

10 Q DID YOU SCORE ANY ACTUARIAL MEASURES WITH REGARD TO
11 THAT EVALUATION?

12 A YES, I DID.

13 Q DID YOU CONDUCT AN INTERVIEW OF MR. ANTONE IN
14 CONNECTION WITH THAT EVALUATION?

15 A NO, I DID NOT. AGAIN, I MET WITH HIM BRIEFLY TO
16 INDICATE THAT I WOULD BE DOING ANOTHER REPORT THAT HAD
17 BEEN ORDERED BY THE COURT IN THIS CASE, AND AT THAT TIME
18 HE DECLINED TO PARTICIPATE.

19 Q DID YOU RENDER AN OPINION AT THE END OF THAT
20 EVALUATION AS TO WHETHER HE MET CRITERIA FOR COMMITMENT
21 UNDER THE ADAM WALSH ACT?

22 A YES, I DID.

23 Q WHAT WAS YOUR OPINION AT THAT TIME?

24 A IT WAS MY OPINION THAT MR. ANTONE DID MEET CRITERIA
25 FOR CIVIL COMMITMENT UNDER 4248.

1 Q DID YOU HAVE A SUBSEQUENT OPPORTUNITY TO CONDUCT
2 ANOTHER EVALUATION OF MR. ANTONE?

3 A YES, I DID.

4 Q HOW DID THAT COME ABOUT?

5 A THAT CAME ABOUT JUST A LITTLE BIT MORE THAN A YEAR
6 AGO. THAT WAS IN RESPONSE TO A STANDING ORDER FROM THE
7 COURT ESSENTIALLY TO PROVIDE AN UPDATE TO THE FORENSIC
8 EVALUATION THAT I HAD CONDUCTED EARLIER.

9 Q AND WHEN DID YOU DO THAT UPDATE?

10 A THAT UPDATE WAS CONDUCTED IN SEPTEMBER OF 2010.

11 Q IS THAT PROVIDED AS GOVERNMENT'S EXHIBIT NUMBER 6?

12 A YES, IT IS.

13 Q WERE THERE ANY CHANGES IN THIS REPORT FROM YOUR 2007
14 REPORT?

15 A THE CHANGES WOULD BE THAT I, IN THE UPDATED REPORT
16 FROM LAST YEAR, I FOCUSED ON MR. ANTONE'S BEHAVIOR
17 ESSENTIALLY AND HIS HISTORY SINCE MY LAST REPORT. SO IT
18 WASN'T AS LENGTHY OF A REPORT. BUT THERE WERE REALLY NO
19 SUBSTANTIVE CHANGES IN TERMS OF HIS DIAGNOSIS REMAINED
20 THE SAME. HIS SCORE ON THE UPDATED ACTUARIAL REMAINED
21 THE SAME. AND MY OPINION REGARDING HIS SEXUAL
22 DANGEROUSNESS, THAT ALSO REMAINED THE SAME.

23 Q SO YOU MENTIONED AN UPDATED ACTUARIAL. DID YOU
24 ACTUALLY DO A NEW ACTUARIAL?

25 A I DID.

1 Q WHAT WAS THAT?

2 A I UTILIZED THE STATIC-99R IN SEPTEMBER OF 2010 AS
3 OPPOSED TO THE REGULAR STATIC-99 THAT I HAD USED FOUR AND
4 HALF YEARS AGO.

5 Q WHY DID YOU DO THAT?

6 A WELL, BECAUSE THE -- THAT IS WHAT IS ACCEPTED IN THE
7 FIELD NOW. THE RESEARCHERS OR THE DEVELOPERS OF THE
8 INSTRUMENT RECOMMEND USING THE 99R AS OPPOSED TO THE 99
9 AT THIS TIME.

10 Q WERE THERE ANY ADDITIONAL DOCUMENTS THAT YOU CAME
11 ABOUT IN PREPARING YOUR UPDATE?

12 A THERE WERE SOME ADDITIONAL DOCUMENTS IN TERMS OF
13 BUREAU OF PRISONS RECORDS, BUT THERE WERE NO OTHER
14 DOCUMENTS NECESSARILY PERTAINING TO HIS CRIMINAL HISTORY
15 THAT I HAD TO REVIEW.

16 Q DID YOU RENDER AN OPINION AT THE CONCLUSION OF THAT
17 REPORT?

18 A YES, I DID.

19 Q WHAT WAS THAT OPINION?

20 A THAT MR. ANTONE MET THE CRITERIA FOR CIVIL COMMITMENT
21 PURSUANT TO 4248.

22 Q SO WHEN YOU WERE DOING YOUR EVALUATIONS, AND
23 SPECIFICALLY THE MOST RECENT CONCLUSION, WHAT QUESTIONS
24 WERE YOU LOOKING AT OR WHAT STANDARD WERE YOU USING TO
25 DETERMINE WHETHER MR. ANTONE MET CRITERIA UNDER THE ADAM

1 WALSH ACT?

2 A WELL, I WAS ESSENTIALLY LOOKING AT THREE THINGS.
3 FIRST OF ALL, WHETHER OR NOT MR. ANTONE HAD COMMITTED OR
4 ATTEMPTED ANY SEXUALLY VIOLENT CONDUCT OR CHILD
5 MOLESTATION.

6 I ALSO LOOKED AT WHETHER OR NOT MR. ANTONE SUFFERED
7 FROM A SERIOUS MENTAL ILLNESS ABNORMALITY OR DISORDER,
8 AND I ALSO LOOKED AT WHETHER OR NOT MR. ANTONE WOULD
9 EXPERIENCE SERIOUS DIFFICULTY IN REFRAINING FROM SEXUALLY
10 VIOLENT CONDUCT OR CHILD MOLESTATION IF RELEASED TO THE
11 COMMUNITY.

12 Q DID YOU HAVE ANY DEFINITIONS TO GUIDE YOU ON
13 ANSWERING THOSE QUESTIONS?

14 A YES, I DID.

15 Q WHERE DID THOSE COME FROM?

16 A FROM THE FEDERAL REGISTER.

17 Q DOES THE FEDERAL REGISTER THEN DEFINE CERTAIN TERMS?

18 A YES, IT DOES.

19 Q LET'S TALK ABOUT -- IS IT FAIR TO CALL THEM PRONGS,
20 PRONG ONE, PRONG TWO AND PRONG THREE?

21 A I WOULD SAY THAT IS FAIR.

22 Q LET'S TALK ABOUT PRONG ONE. HAD YOU FORMULATED AN
23 OPINION AS TO WHETHER OR NOT MR. ANTONE HAS ENGAGED IN OR
24 ATTEMPTED TO ENGAGE IN SEXUALLY VIOLENT CONDUCT OR CHILD
25 MOLESTATION?

1 A YES, I CAME TO THAT OPINION.

2 Q WHAT WAS YOUR OPINION ON THAT?

3 A MY OPINION IS -- OR WAS AND IS, THAT HE HAS ENGAGED
4 IN SEXUALLY VIOLENT CONDUCT AND CHILD MOLESTATION. IF
5 YOU LOOK, FOR INSTANCE, AT HIS CHRONOLOGY UP ON THE
6 BOARDS, YOU CAN SEE THAT MR. ANTONE HAS RAPED FOUR
7 INDIVIDUALS, AND ATTEMPTED TO RAPE A FIFTH PERSON. SO
8 THAT WOULD CERTAINLY BE CONSIDERED SEXUALLY VIOLENT
9 CONDUCT.

10 AS FOR THE CHILD MOLESTATION, MR. ANTONE HAS ABUSED
11 SEVERAL INDIVIDUALS UNDER THE AGE OF 18, AND FEDERAL
12 REGISTER NOTES THAT CHILD MOLESTATION CONSISTS OF
13 UNLAWFUL SEXUAL CONDUCT WITH A PERSON UNDER THE AGE OF
14 18.

15 Q NOW, IN YOUR REVIEW OF THE RECORDS, WERE THERE
16 CONVICTIONS FOR THESE SEXUAL OFFENSES THAT YOU RELIED
17 UPON?

18 A IN MOST OF THE CASES, YES, THERE WERE CONVICTIONS.

19 Q AND ARE YOU ALSO AWARE OF WHETHER MR. ANTONE HIMSELF
20 HAS ADMITTED TO ANY OF THESE CRIMES?

21 A YES. IN PARTICULAR, ONE OF THE VICTIMS LISTED ON THE
22 CHRONOLOGY, HIS GIRLFRIEND TANYA MCCLOUD, HE WAS NEVER
23 CHARGED OR CONVICTED FOR RAPING HER, BUT DURING A PRIOR
24 PSYCHOLOGICAL EVALUATION IN 1999 HE ADMITTED TO RAPING
25 HER ON SEVERAL OCCASIONS.

1 Q AND ARE YOU FAMILIAR WITH A PLEA AGREEMENT THAT HE
2 ENTERED INTO IN HIS FEDERAL COURT CRIME?

3 A YES, I AM.

4 Q DID HE ADMIT TO THE CRIMES IN THE PLEA AGREEMENT?

5 A YES, HE DID.

6 Q AND DID YOU ALSO WITNESS HIS TESTIMONY YESTERDAY?

7 A YES, I DID.

8 Q DURING HIS TESTIMONY YESTERDAY, DID HE ALSO ADMIT TO
9 ANY OF THE CRIMES?

10 A YES, HE DID.

11 Q ALL RIGHT. WITH REGARD TO WHAT I WILL CALL PRONG
12 TWO, WHAT IS THAT IN YOUR MIND, THE SERIOUS MENTAL
13 ILLNESS ABNORMALITY OR DISORDER; WHAT ARE YOU LOOKING FOR
14 IN ANSWERING THAT QUESTION?

15 A I AM LOOKING FOR WHETHER OR NOT THE INDIVIDUAL
16 SUFFERS FROM A SERIOUS MENTAL ILLNESS ABNORMALITY OR
17 DISORDER. IN THE CASE OF MR. ANTONE, I DETERMINED THAT
18 HE SUFFERED FROM SUCH CONDITIONS. THOSE WOULD BE
19 PARAPHILIA NOT OTHERWISE SPECIFIED, NONCONSENT, AND
20 PEDOPHILIA, AS WELL AS ANTISOCIAL PERSONALITY DISORDER.

21 Q ANYTHING ELSE?

22 A I ALSO DIAGNOSED HIM WITH POLYSUBSTANCE DEPENDENCE IN
23 A CONTROLLED ENVIRONMENT.

24 Q ARE ALL OF THOSE DIAGNOSES FOUND IN ANY PARTICULAR
25 MANUAL OR TREATISES USED IN YOUR FIELD?

1 A THOSE ARE LISTED IN THE DIAGNOSTIC AND STATISTICAL
2 MANUAL FOR MENTAL DISORDERS, THE DSM WHICH IS USED BY
3 MENTAL HEALTH PROFESSIONALS TO RENDER DIAGNOSES.

4 Q IS THAT ORDINARILY AND ROUTINELY USED IN THE FIELD?

5 A YES, IT IS.

6 Q AND IS IT WELL ACCEPTED IN THE FIELD OF FORENSIC
7 PSYCHOLOGY?

8 A YES, IT IS.

9 Q LET'S TALK ABOUT YOUR FIRST DIAGNOSIS. WHAT WAS YOUR
10 FIRST DIAGNOSIS?

11 A MY FIRST DIAGNOSIS WAS PARAPHILIA NOT OTHERWISE
12 SPECIFIED, NONCONSENT, AND HEBEPHILIA.

13 Q WHAT IS PARAPHILIA NOT OTHERWISE SPECIFIED?

14 A PARAPHILIA NOT OTHERWISE SPECIFIED -- WELL, I WOULD
15 SAY THAT PARAPHILIA, IN GENERAL, IS SEXUALLY RECURRENT
16 INTENSE FANTASIES, URGES, AND BEHAVIORS INVOLVING
17 NON-LIVING THINGS, THE SUFFERING OR HUMILIATION OF
18 ONESELF OR ONE'S PARTNER, OR WITH CHILDREN OR
19 NON-CONSENTING PERSONS.

20 MORE SPECIFICALLY, PARAPHILIA NOT OTHERWISE
21 SPECIFIED IS LISTED IN THE DSM AS A DIAGNOSTIC CATEGORY.

22 Q AND GENERALLY, HOW WOULD YOU EXPLAIN WHY THERE IS
23 SORT OF A QUALIFIER ON THE END OF PARAPHILIA NOT
24 OTHERWISE SPECIFIED. WHY IS THAT QUALIFIER ON THERE?

25 A THAT QUALIFIER, NOT OTHERWISE SPECIFIED, IS PROVIDED

1 BECAUSE SIMPLY NOT ALL OF THE PARAPHILIAS CAN BE LISTED
2 SPECIFICALLY IN THE DSM.

3 DSM DOES LIST SEVERAL OF THEM, INCLUDING PEDOPHILIA,
4 VOYEURISM, EXHIBITIONISM, FETISHISM, FROTTEURISM, BUT
5 THERE ARE DOZENS, LITERALLY DOZENS OF PARAPHILIAS, SO
6 THEY AREN'T ALL LISTED IN THE DSM. SO THAT CATEGORY OF
7 NOT OTHERWISE SPECIFIED IS PROVIDED AS IT IS FOR OTHER
8 TYPES OF DISORDERS IN THE DSM, MOOD DISORDERS, PSYCHOTIC
9 DISORDERS, ANXIETY DISORDERS. THEY ALL HAVE THAT NOT
10 OTHERWISE SPECIFIED CATEGORY TO THEM AS WELL.

11 SO IT'S PROVIDED IN THE DSM SO THAT ONE CAN LIST A
12 DIAGNOSIS, IN THIS CASE, PARAPHILIA NOT OTHERWISE
13 SPECIFIED, EVEN IF IT'S NOT -- THAT PARTICULAR AREA OF
14 DEVIANCE ISN'T LISTED IN THE DSM.

15 Q SO IT'S ESSENTIALLY A CATCH-ALL FOR SOME THINGS THAT
16 HAVEN'T BEEN LISTED?

17 A THAT'S CORRECT. IF YOU LOOK AT THE DEFINITION FOR
18 PARAPHILIA NOT OTHERWISE SPECIFIED IN THE DSM, IT
19 PROVIDES SOME EXAMPLES THAT WERE DISCUSSED YESTERDAY LIKE
20 COPROPHILIA, TELEPHONE SCATALOGIA, THINGS OF THAT NATURE,
21 BUT IF YOU READ THE DEFINITION, IT SAYS EXAMPLES THAT
22 INCLUDE, BUT ARE NOT LIMITED TO.

23 Q SO THERE CAN BE OTHER THINGS IN ADDITION TO THOSE
24 EXAMPLES, BUT DO THEY THEN COME BACK TO THE GENERAL
25 DEFINITION OF A PARAPHILIA AND THEY FIT WITHIN THAT?

1 A CORRECT. THEY WOULD FIT UNDERNEATH THAT UMBRELLA OF
2 PARAPHILIA NOT OTHERWISE SPECIFIED.

3 Q AND SO YOUR FIRST SORT OF SPECIFIER OF PARAPHILIA NOT
4 OTHERWISE SPECIFIED IS NON-CONSENT; IS THAT CORRECT?

5 A THAT'S CORRECT.

6 Q AND HOW DO YOU EXTRAPOLATE THAT? HOW DID YOU COME
7 ABOUT THAT PARTICULAR DIAGNOSIS?

8 A IN MR. ANTONE'S CASE, I ARRIVED AT THAT PARTICULAR
9 DIAGNOSIS IN LOOKING AT HIS PATTERN OF OFFENDING. AS I
10 MENTIONED EARLIER, HE RAPED FOUR WOMEN. HE HAD
11 NON-CONSENSUAL INTERCOURSE WITH FOUR WOMEN AND HE
12 ATTEMPTED TO DO SO WITH A FIFTH PERSON.

13 SO I HAVE THOSE ESSENTIALLY FACTUAL BEHAVIORAL
14 INDICATORS OF MR. ANTONE'S SEXUAL DEVIANCE IN THAT
15 REGARD. IN ADDITION, THERE ARE OTHER FACTORS THAT I
16 CONSIDERED RELEVANT TO MR. ANTONE.

17 IN 1999 HE UNDERWENT AN EVALUATION, AND PART OF THE
18 EVALUATION WAS THE ADMINISTRATION OF A POLYGRAPH. DURING
19 THAT ADMINISTRATION, MR. ANTONE DENIED HAVING SEXUAL
20 FANTASIES OF RAPE. AND HIS -- THE RESULTS OF THE
21 POLYGRAPH INDICATED THAT HE WAS DECEPTIVE WITH RESPECT TO
22 THAT PARTICULAR QUESTION REGARDING THE RAPE FANTASIES.

23 THE COURT: DR. GUTIERREZ, LET ME STOP YOU.
24 THERE IS SOME MATERIAL ON THE SCREEN. COULD THAT BE
25 REMOVED, PLEASE?

1 MR. BREDENBERG: TAKE IT OFF, DID YOU SAY?

2 THE COURT: YES, SIR. THE GROUND RULES ARE
3 THAT NOTHING IS TO BE PUT ON THE SCREEN UNLESS IT'S
4 STATED ON THE RECORD THAT IT'S BEING PUT ON THE SCREEN.

5 MR. BREDENBERG: YES, YOUR HONOR.

6 THE COURT: I THINK OTHERWISE IT MISREPRESENTS
7 WHAT IS HAPPENING IN THE COURTROOM.

8 MR. BREDENBERG: SORRY, YOUR HONOR.

9 THE COURT: DR. GUTIERREZ, YOU MAY CONTINUE
10 WITH YOUR ANSWER.

11 THE WITNESS: THANK YOU.

12 A SO THAT FROM THAT 1999 EVALUATION, WE HAVE THE
13 EVIDENCE THAT HE WAS DECEPTIVE ON THE POLYGRAPH WITH
14 RESPECT TO FANTASIES OF RAPE.

15 ALSO, AS PART OF THAT EVALUATION, MR. ANTONE
16 COMPLETED AN OBJECTIVE TEST KNOWN AS THE MULTIPHASIC SEX
17 INVENTORY. IT'S ESSENTIALLY AN INVENTORY OR A LENGTHY
18 QUESTIONNAIRE IN WHICH AN INDIVIDUAL HAS TO PROVIDE
19 RESPONSES, TRUE OR FALSE, TO CERTAIN STATEMENTS.

20 MR. ANTONE APPROACHED THAT PARTICULAR TESTING IN A
21 DEFENSIVE MANNER AND THAT WAS NOTED IN THE REPORT BY GRAY
22 AND SADLER. DESPITE ANSWERING THE QUESTIONNAIRE IN A
23 GUARDED OR DEFENSIVE MANNER, HE STILL ENDORSED ITEMS IN
24 SUCH A WAY SO THAT HIS RESPONSE STYLE OR HIS RESPONSE
25 PATTERN WAS CONSISTENT WITH THOSE WHO HAVE -- WHO ARE

1 RAPISTS ESSENTIALLY, THE NORMATIVE GROUP THAT WAS USED
2 FOR THAT PARTICULAR TEST.

3 MR. ANTONE'S RESPONSE STYLE WAS CONSISTENT WITH
4 RAPISTS. SO, THOSE ARE TWO ELEMENTS THAT I CONSIDERED
5 FROM THAT 1999 EVALUATION AS FAR AS MY OWN DIAGNOSIS OF
6 PARAPHILIA NOT OTHERWISE SPECIFIED, NON-CONSENT.

7 Q LET ME ASK YOU SOMETHING ABOUT THAT PARTICULAR
8 REPORT. IS THAT REPORT, THE 1999 REPORT BY GRAY AND
9 SADLER, IS THAT SOMETHING ORDINARILY USED BY EXPERTS IN
10 THE FIELD IN THESE KIND OF EVALUATIONS?

11 A YES, THEY ARE. THOSE INSTRUMENTS, THOSE METHODS ARE
12 ORDINARILY USED WHEN POSSIBLE.

13 Q YOU HAVE REVIEWED THAT PARTICULAR ONE THAT YOU ARE
14 TALKING ABOUT?

15 A YES, I HAVE.

16 Q IS THERE ANY INDICATION TO YOU THAT ANYTHING IN THAT
17 EVALUATION WAS INCORRECT OR MISTAKEN?

18 A NO. THERE IS NOTHING THAT WOULD SUGGEST TO ME THAT
19 THERE WAS AN ERROR OR MISTAKE IN THAT REPORT.

20 THE COURT: DR. GUTIERREZ, WHICH TEST
21 SPECIFICALLY WAS IT THAT YOU WERE REFERRING TO WHERE THE
22 RESPONSE PATTERNS BY MR. ANTONE WERE CONSISTENT WITH
23 THOSE OF RAPISTS?

24 THE WITNESS: THAT WAS THE MULTIPHASIC SEX
25 INVENTORY, SECOND EDITION.

1 THE COURT: THANK YOU.

2 MR. BREDEBERG:

3 Q IN ADDITION TO YOUR DETERMINATION THAT THERE WERE
4 RECURRING SEXUAL OFFENSES OVER A PERIOD OF TIME AND THE
5 INFORMATION THAT YOU GLEANED FROM THE GRAY AND SADLER
6 REPORT, WHAT ELSE, IF ANYTHING, DID YOU CONSIDER IN
7 DIAGNOSING THE PARAPHILIA NOT OTHER SPECIFIED WITH THE
8 SPECIFIER OF NON-CONSENT?

9 A SOME OF THE OTHER THINGS THAT I CONSIDERED WERE, FOR
10 INSTANCE, MR. ANTONE WAS ENGAGING IN THESE INSTANCES OF
11 NON-CONSENSUAL INTERCOURSE WITH WOMEN EVEN THOUGH HE WAS
12 INVOLVED IN A RELATIONSHIP WITH MS. MCCLOUD AT THE TIME,
13 AND THAT CERTAINLY IS AN INDICATOR OF A PARAPHILIA.

14 IN THIS CASE, PARAPHILIA NOT OTHERWISE SPECIFIED,
15 NON-CONSENT, THAT IN INDIVIDUALS ENGAGING IN THESE
16 ACTIVITIES, ESSENTIALLY RAPING WOMEN, EVEN THOUGH HE HAS
17 A CONSENSUAL PARTNER AVAILABLE TO HIM.

18 Q HOW IS THAT SIGNIFICANT TO YOUR OPINION?

19 A THAT IS SIGNIFICANT BECAUSE HE ALREADY ESSENTIALLY
20 HAS AN OUTLET OR A PERSON TO HAVE SEXUAL INTERCOURSE
21 WITH, SOMEBODY WHO IS WILLING AND CONSENSUAL. AND THE
22 FACT THAT HE IS STILL ENGAGING IN THESE NON-CONSENSUAL
23 ACTS WITH OTHER WOMEN AND WITH OTHER INDIVIDUALS
24 INDICATES THAT THERE IS AN ISSUE THERE WITH RESPECT TO
25 SEXUAL DEVIANCE.

1 Q AND SO THIS DETERMINATION THAT ALL THE FACTORS THAT
2 YOU JUST TALKED ABOUT, DOES THAT MATCH UP THEN WITH THE
3 GENERAL DEFINITION OF PARAPHILIA?

4 A IT MATCHES UP WITH THE GENERAL DEFINITION OF
5 PARAPHILIA IN THAT THERE IS EVIDENCE OF RECURRENT AND
6 INTENSE BEHAVIORS INVOLVING NON-CONSENTING PERSONS.
7 THERE IS ALSO EVIDENCE OF FANTASIES IN THIS CASE, RAPE
8 FANTASIES, AND CERTAINLY THERE WOULD BE EVIDENCE OF URGES
9 CONSIDERING THAT THESE ACTS HAVE OCCURRED MANY TIMES OVER
10 A PERIOD OF APPROXIMATELY TEN YEARS. THERE IS EVIDENCE
11 OF THAT AS WELL.

12 Q NOW, YOU WERE IN THE COURTROOM YESTERDAY; CORRECT?

13 A CORRECT.

14 Q AND DID YOU HEAR THE QUESTIONS REGARDING WHETHER THIS
15 IS A VALID DIAGNOSIS?

16 A YES, I DID.

17 Q AND WHAT IS YOUR RESPONSE TO THAT?

18 A MY RESPONSE TO THAT IS THAT IT IS A VALID DIAGNOSIS;
19 THAT IT'S GENERALLY ACCEPTED IN THE FIELD. CERTAINLY
20 THERE IS SOME DEBATE ABOUT THAT, BUT I WOULD SAY THAT
21 THERE IS DEBATE ABOUT MANY THINGS IN SCIENCE. I THINK
22 IT'S IMPORTANT TO RECOGNIZE THAT THERE ARE APPROXIMATELY
23 20 STATES IN THIS COUNTRY THAT HAVE CIVIL COMMITMENT LAWS
24 IN WHICH INDIVIDUALS HAVE BEEN CIVILLY COMMITTED AS
25 SEXUALLY DANGEROUS PERSONS, AND A SURVEY WAS TAKEN A FEW

1 YEARS AGO AND OF ALL OF THOSE STATES, EVERY SINGLE ONE OF
2 THEM HAD INDIVIDUALS CIVILLY COMMITTED AS SEXUALLY
3 DANGEROUS PERSONS WITH THIS PARTICULAR DIAGNOSIS,
4 PARAPHILIA NOT OTHERWISE SPECIFIED, NON-CONSENT.

5 Q YOU ALSO -- WHAT IS THE NEXT DIAGNOSIS THAT YOU
6 DIAGNOSED MR. ANTONE WITH?

7 A WELL, IT'S ESSENTIALLY ALONG THE SAME LINES, BUT IT'S
8 PARAPHILIA NOT OTHERWISE, HEBEPHILIA, ANOTHER SPECIFIER
9 THAT I THINK APPLIES TO MR. ANTONE.

10 Q SO TO BE CLEAR, YOU ARE DIAGNOSING WITH PARAPHILIA
11 NOT OTHERWISE SPECIFIED?

12 A CORRECT.

13 Q THAT IS THE DIAGNOSIS. AND THEN YOU ADD THE
14 SPECIFIER OF HEBEPHILIA; WHY IS THAT?

15 A LIKE I DID FOR THE SPECIFIER OF NON-CONSENT, I
16 PROVIDED THE SPECIFIER OR CLARIFICATION OF HEBEPHILIA FOR
17 THAT PURPOSE, TO NOTE SOME DIAGNOSTIC CLARITY FOR THE
18 INDIVIDUAL READING THE REPORTS SO THAT THEY KNOW WHAT
19 PARTICULAR AREA OF PARAPHILIA NOT OTHERWISE SPECIFIED IS
20 APPLICABLE TO THE RESPONDENT.

21 Q AND WHAT IS HEBEPHILIA?

22 A HEBEPHILIA IS A PARAPHILIA. IT'S RECURRENT SEXUAL
23 FANTASIES, URGES, OR BEHAVIORS INVOLVING CHILDREN WHO ARE
24 PUBESCENT IN TERMS OF THEIR DEVELOPMENT.

25 PEDOPHILIA, WHICH IS MORE COMMONLY KNOWN,

1 SPECIFICALLY APPLIES TO THESE URGES, FANTASIES,
2 BEHAVIORS, INVOLVING PREPUBESCENT CHILDREN. SO
3 HEBEPHILIA COVERS THOSE CHILDREN, THOSE VICTIMS, WHO ARE
4 PUBESCENT IN TERMS OF THEIR DEVELOPMENT.

5 Q SO -- BUT THEY ARE STILL CHILDREN?

6 A THAT'S CORRECT.

7 Q JUST AN OLDER AGE?

8 A AN OLDER AGE GROUP.

9 Q AND SO HOW DID YOU FIND THAT MR. ANTONE MET THE
10 CRITERIA FOR THIS PARTICULAR DIAGNOSIS?

11 A IN LOOKING AT HIS CRIMINAL HISTORY, I NOTICED THAT
12 THERE WERE SEVERAL VICTIMS THAT FIT THAT PUBESCENT AGE
13 CATEGORY, SO TO SPEAK. IF YOU LOOK ON THE BOARD THERE,
14 T.F. WAS APPROXIMATELY 13 YEARS OLD. WE DON'T HAVE AN
15 EXACT DATE AS TO WHEN THAT FIRST INSTANCE OCCURRED, BUT
16 SHE WAS APPROXIMATELY 13 YEARS OLD WHEN MR. ANTONE WAS
17 ABOUT 17 OR 18 YEARS OLD.

18 V.R. NUMBER 1 WAS 16 YEARS OLD AND MR. ANTONE WAS 18
19 YEARS OLD. I DON'T REALLY CONSIDER THAT PARTICULAR
20 INSTANCE AS FALLING UNDER THAT HEBEPHILIA DIAGNOSIS
21 BECAUSE THERE REALLY WASN'T ENOUGH OF AN AGE DIFFERENCE
22 THERE BETWEEN THE TWO. YOU TYPICALLY LOOK FOR
23 APPROXIMATELY ABOUT A FIVE YEAR AGE DIFFERENCE WHEN
24 ASSIGNING A DIAGNOSIS OF PEDOPHILIA OR HEBEPHILIA.

25 V.R. NUMBER 2 WAS 14 OR 15 YEARS OLD AND THAT

1 PUBESCENT AGE RANGE OR RANGE OF DEVELOPMENT WHEN MR.
2 ANTONE WAS 20 OR 21 YEARS OLD.

3 AND THEN FINALLY R.A. WAS APPROXIMATELY 12 YEARS OLD
4 AND MR. ANTONE WAS TWICE HER AGE AT THAT TIME. SO, THERE
5 WERE INDICATORS, ESSENTIALLY THOSE THREE INDIVIDUALS THAT
6 I MENTIONED THERE FIT UNDER THAT HEBEPHILIA RANGE.

7 Q SO WAS THAT EVIDENCE OF BEHAVIOR THEN THAT YOU ARE
8 USING?

9 A I WOULD SAY THAT THOSE INSTANCES OF MOLESTATION AND
10 THE ONE CASE WITH V.R. NUMBER 2, RAPE -- WHEN HE RAPED
11 HER, THAT THOSE WERE BEHAVIORAL INDICATORS OF A
12 PARAPHILIA PERTAINING TO PUBESCENT CHILDREN.

13 THE COURT: LET ME JUST STOP YOU, MR.
14 BREDENBERG.

15 MR. BREDENBERG: I AM SORRY.

16 THE COURT: SO DR. GUTIERREZ, THE THREE
17 EPISODES OF HEBEPHILIA, THE THREE MANIFESTATIONS HERE IN
18 THE CHRONOLOGY ARE THE EPISODE WITH T.F., THE INCIDENT
19 WITH V.R. NUMBER 2, AND THEN THE INCIDENT WITH R.A.?

20 THE WITNESS: THAT'S CORRECT, YOUR HONOR.

21 THE COURT: OKAY. THANK YOU. MR.
22 BREDENBERG.

23 MR. BREDENBERG: THANK YOU.

24 Q SO IS A PERIOD OF SIX MONTHS SIGNIFICANT?

25 A IT IS.

1 Q AND HOW IS THAT SIGNIFICANT?

2 A TYPICALLY WITH ANY PARAPHILIA, YOU ARE LOOKING FOR
3 EVIDENCE OF THE BEHAVIOR OR THE DISORDER OVER A PERIOD OF
4 AT LEAST SIX MONTHS IN ORDER TO ASSIGN THE DIAGNOSIS. IF
5 IT'S LESS THAN THAT, THEN THE DSM RECOMMENDS THAT, YOU
6 KNOW, A SUFFICIENT AMOUNT OF TIME HAS NOT ELAPSED FOR
7 RENDERING THAT DIAGNOSIS.

8 AND THAT IS COMMON WITH MANY DIAGNOSES IN THE DSM IN
9 TERMS OF HAVING A PERIOD OF DURATION, WHETHER IT BE FOR
10 DEPRESSION OR SCHIZOPHRENIA, THAT IS FAIRLY COMMON IN THE
11 DSM TO HAVE SOME SORT OF TIME FRAME.

12 Q DID YOU FIND THAT SIX MONTHS WITH MR. ANTONE?

13 A YES, I DID, WITH RESPECT TO THE PARAPHILIA NOT
14 OTHERWISE SPECIFIED, NON-CONSENT, AND THE PARAPHILIA NOT
15 OTHERWISE SPECIFIED, HEBEPHILIA, THE RANGE OF HIS
16 OFFENSES CERTAINLY PASSED SIX MONTHS.

17 Q WERE THERE OTHER THINGS THAT YOU CONSIDERED TO
18 DIAGNOSE THE PARAPHILIA NOT OTHERWISE SPECIFIED, THE
19 HEBEPHILIA SPECIFIER?

20 A THERE WERE.

21 Q WHAT WERE THOSE?

22 A IN THE CASE OF MR. ANTONE, GOING BACK TO THAT 1999
23 GRAY AND SADLER EVALUATION, THE MSI-II THAT I HAD
24 MENTIONED BEFORE, NOT ONLY DID HIS RESPONSE STYLE
25 ESSENTIALLY MATCH UP WITH THOSE THAT HAD -- THAT WERE

1 RAPISTS, BUT HIS RESPONSE STYLE WAS ALSO CONSISTENT AND
2 INDICATIVE OF CHILD MOLESTERS, SO THAT WAS ANOTHER PIECE
3 OF INFORMATION THAT I CONSIDERED.

4 PART OF THAT EVALUATION BACK IN 1999 WAS THE
5 ADMINISTRATION OF ANOTHER INSTRUMENT KNOWN AS THE ABEL
6 ASSESSMENT. AND MR. ANTONE'S RESULTS ON THAT MEASURE
7 INDICATED THAT HE HAD SEXUAL ATTRACTION TO MINORS IN THAT
8 PUBESCENT AGE GROUP. IN FACT, THE ADMINISTRATION OF THAT
9 MEASURE INDICATED THAT THAT WAS HIS PREFERENCE GROUP.
10 HIS PREFERENTIAL GROUP WERE FEMALES BETWEEN THE AGE OF 14
11 AND 17, MORE SO THAN ADULT FEMALES.

12 SO THOSE PIECES OF INFORMATION, IN ADDITION TO THE
13 BEHAVIOR INDICATORS, AS WE SEE UP ON THE CHRONOLOGY, WERE
14 THE BASIS FOR MY DIAGNOSIS OF PARAPHILIA NOT OTHERWISE
15 SPECIFIED, HEBEPHILIA.

16 Q LET ME ASK YOU THIS. WE ARE TALKING ABOUT -- WHAT I
17 HAVE HEARD YOU SAY IS THAT IN SOME CASES WE ARE TALKING
18 ABOUT TEENAGE GIRLS THAT MAY FIT INTO THIS CRITERIA OF
19 HEBEPHILIA; IS THAT CORRECT?

20 A THAT'S CORRECT.

21 Q IS IT ORDINARY OR IS IT NORMAL FOR -- I HATE TO USE
22 THE WORD NORMAL, BUT FOR NORMAL, UNDIAGNOSED MALES TO BE
23 ATTRACTED TO TEENAGE GIRLS?

24 A YES, IT IS. RESEARCH HAS SHOWN AND THERE HAS BEEN
25 MUCH WRITTEN AND DISCUSSED ABOUT IT, THAT IT WOULD BE

1 NORMAL FOR MEN, ADULT MEN, TO HAVE SOME SEXUAL ATTRACTION
2 TO TEENAGE GIRLS, ADOLESCENT GIRLS; HOWEVER, THE
3 DIFFERENCE IS IN TERMS OF THE DEGREE TO WHICH AN
4 INDIVIDUAL IS SEXUALLY ATTRACTED TO ADOLESCENTS. THE
5 DIFFERENCE IS ALSO IN TERMS OF WHETHER OR NOT AN
6 INDIVIDUAL ACTS UPON ANY ATTRACTION, URGES, OR FANTASIES
7 REGARDING ADOLESCENT TEENAGE GIRLS.

8 Q AND WITH REGARD TO MR. ANTONE, DID YOU FIND THOSE
9 DIFFERENTIATING FACTORS?

10 A I DID. IN HIS CASE, THERE IS EVIDENCE THAT HE HAS
11 ACTED UPON HIS URGES TOWARDS THE VICTIMS WITHIN THIS
12 RANGE OF DEVELOPMENT, THIS PUBESCENT GROUP OF GIRLS. WE
13 HAVE EVIDENCE OF THAT IN HIS CRIMINAL HISTORY.

14 Q DO YOU CONSIDER PARAPHILIA NOT OTHERWISE SPECIFIED A
15 SERIOUS MENTAL ILLNESS, ABNORMALITY OR DISORDER?

16 A YES, I DO.

17 Q AND SIMILARLY TO THE LAST QUESTION OR THE LAST
18 DIAGNOSIS, IS THERE DEBATE IN YOUR FIELD REGARDING THE
19 DIAGNOSIS WITH THE SPECIFIER HEBEPHILIA?

20 A YES, THERE IS SOME DEBATE AND SOME DISCUSSION ABOUT
21 THE SPECIFIC DIAGNOSIS OF PARAPHILIA NOT OTHERWISE
22 SPECIFIED, HEBEPHILIA.

23 Q BUT YOU STILL FIND THAT IT'S AN APPROPRIATE
24 DIAGNOSIS?

25 A YES, I DO.

1 Q WHY IS THAT?

2 A WELL, BECAUSE IT'S GENERALLY ACCEPTED IN THE FIELD.
3 MANY PSYCHOLOGISTS USE THIS DIAGNOSIS IN THE EVALUATION
4 AND TREATMENT OF SEX OFFENDERS, AND IT HAS BEEN USED AS A
5 DIAGNOSIS FOR THE PURPOSE OF THESE TYPES OF EVALUATIONS.

6 THERE WAS A RECENT CASE UP IN THE FIRST CIRCUIT, U.S.
7 VERSUS CARTA (PHONETIC), IN WHICH THE COURT RULED THAT
8 PARAPHILIA NOT OTHERWISE SPECIFIED, GENERALLY SPEAKING,
9 AND PARAPHILIA NOT OTHERWISE SPECIFIED, HEBEPHILIA, MORE
10 SPECIFICALLY QUALIFIED AS A SERIOUS MENTAL ILLNESS,
11 ABNORMALITY OR DISORDER.

12 Q AND WAS THAT UNDER THE ADAM WALSH ACT?

13 A YES.

14 Q HAVE YOU DIAGNOSED MR. ANTONE WITH ANYTHING ELSE?

15 A I ALSO DIAGNOSED MR. ANTONE WITH POLYSUBSTANCE
16 DEPENDENCE IN A CONTROLLED ENVIRONMENT.

17 Q WHAT DOES THAT MEAN?

18 A ESSENTIALLY THAT DIAGNOSIS HAS TO DO WITH MR.
19 ANTONE'S LENGTHY HISTORY OF DEPENDENCE ON VARIOUS
20 SUBSTANCES, NOT ONLY ALCOHOL BUT THE RECORDS INDICATE A
21 PATTERN OF DEPENDENCE AND DAILY IF NOT A VERY FREQUENT
22 USE OF COCAINE AND MARIJUANA AS WELL AS WE HEARD
23 YESTERDAY HUFFING WITH GASOLINE AND USE OF OTHER
24 SUBSTANCES SUCH AS LSD, PCP.

25 I AM NOT SURE IF I HAVE NAMED THEM ALL, BUT THERE

1 CERTAINLY IS AN EXTENSIVE HISTORY OF POLYSUBSTANCE
2 DEPENDENCE IN HIS CASE.

3 Q DOES ANYTHING ELSE GO INTO THAT DIAGNOSIS?

4 A WELL, ASIDE FROM THE SELF REPORTS THAT HE HAS MADE IN
5 THE PAST, AND THE TESTIMONY THAT I HEARD YESTERDAY, THERE
6 -- MANY OF THE RECORDS THAT I REVIEWED CERTAINLY
7 CORROBORATE THAT DIAGNOSIS. THE PAST EVALUATION, AND
8 THAT WAS CONDUCTED IN 1999, HIS PRESENTENCE INVESTIGATION
9 REPORT CERTAINLY DETAILED THE EXTENT OF HIS USAGE.

10 Q DOES TREATMENT OF EITHER THE FACT THAT HE DID IT OR
11 DIDN'T DO IT PLAY INTO THAT DIAGNOSIS?

12 A I AM NOT SURE I UNDERSTAND YOUR QUESTION.

13 MR. BREDEBERG: I AM NOT SURE I DO EITHER.

14 Q DOES THE FACT THAT MR. ANTONE MAY OR MAY NOT HAVE
15 RECEIVED TREATMENT EFFECT YOUR DIAGNOSIS?

16 A IT DOES NOT AT THIS TIME BECAUSE HE IS IN A
17 CONTROLLED ENVIRONMENT. THAT IS THE LAST PART OF THAT
18 DIAGNOSIS. ESSENTIALLY, HIS ACCESS TO THE SUBSTANCES IS
19 RESTRICTED. CERTAINLY WE HEARD ABOUT IT YESTERDAY THAT
20 IT IS POSSIBLE FOR INMATES, FOR INDIVIDUALS WHO ARE IN
21 CUSTODY, TO OBTAIN ALCOHOL AND DRUGS, BUT THEIR USE AND
22 AVAILABILITY IS CERTAINLY RESTRICTED TO A GREAT DEGREE.

23 Q IN ADDITION TO THAT, HAVE YOU DIAGNOSED HIM WITH
24 ANYTHING ELSE?

25 A I ALSO DIAGNOSED MR. ANTONE WITH ANTISOCIAL

1 PERSONALITY DISORDER.

2 Q WHAT IS THAT?

3 A PERSONALITY DISORDER IS GENERALLY THE WAY THAT A
4 PERSON INTERACTS WITH HIS OR HER ENVIRONMENT. ANTISOCIAL
5 PERSONALITY IS MARKED BY ESSENTIALLY NOT TAKING INTO
6 ACCOUNT OTHERS RIGHTS AND VIOLATING OTHERS RIGHTS,
7 DECEITFULNESS, DISHONESTY, IRRESPONSIBILITY, IMPULSIVITY.
8 THOSE ARE SOME OF THE HALLMARKS OF ANTISOCIAL PERSONALITY
9 DISORDER.

10 Q AND DOES MR. ANTONE EXHIBIT ANY OF THOSE BEHAVIORS?

11 A YES, HE DOES. IT'S MY OPINION THAT HE MEETS MANY OF
12 THE CRITERIA FOR ANTISOCIAL PERSONALITY DISORDER,
13 CERTAINLY ENOUGH FOR DIAGNOSIS.

14 FIRST OF ALL, YOU HAVE TO HAVE EVIDENCE OF CONDUCT
15 DISORDER PRIOR TO THE AGE OF 15, AND WE HAVE THAT WITH
16 MR. ANTONE WITH RESPECT TO HIS INTERACTIONS WITH THE
17 JUVENILE JUSTICE SYSTEM. A SUSPENSION OR EXPULSION FROM
18 SCHOOL, FIGHTING AND BULLYING WITH OTHER KIDS THAT HAVE
19 BEEN NOTED IN PRIOR RECORDS. SO THAT IS THE FIRST STEP.

20 THEN WE ALSO HAVE EVIDENCE OF NUMEROUS ARRESTS OVER
21 TIME FOR A VARIETY OF OFFENSES. WE HAVE EVIDENCE OF
22 IMPULSIVITY WITH RESPECT TO HIS OFFENSES, BOTH SEXUAL AND
23 NON-SEXUAL. AND WE ALSO HAVE EVIDENCE OF AGGRESSIVENESS
24 OR FIGHTING OR PHYSICAL ALTERCATIONS WITH OTHER
25 INDIVIDUALS, AND THAT IS ONE OF THE CRITERIA FOR

1 ANTISOCIAL PERSONALITY DISORDER.

2 AND I BELIEVE IN MR. ANTONE'S CASE, THERE IS ALSO
3 EVIDENCE OF SOME IRRESPONSIBILITY ON HIS PART OVER THE
4 YEARS IN TERMS OF MAINTAINING CONSISTENT EMPLOYMENT AND
5 PROVIDING FOR HIMSELF.

6 Q AS APPLIED TO MR. ANTONE'S CASE, DO YOU CONSIDER HIS
7 DIAGNOSIS OF ANTISOCIAL PERSONALITY DISORDER A SERIOUS
8 MENTAL ILLNESS, ABNORMALITY OR DISORDER?

9 A YES, I DO.

10 Q NOW, YOU HAVE MENTIONED -- HOW WOULD YOU CALCULATE
11 THE NUMBER OF DIAGNOSES THAT YOU HAVE DONE? IS IT THREE,
12 IS IT FOUR?

13 A I WOULD SAY IT'S THREE.

14 Q OKAY. THE PARAPHILIA NOT OTHERWISE SPECIFIED WITH
15 THE -- ESSENTIALLY WITH THE TWO SPECIFIERS, THE
16 POLYSUBSTANCE DEPENDENCE IN A CONTROLLED ENVIRONMENT, AND
17 THE ANTISOCIAL PERSONALITY DISORDER.

18 Q NOW, DO YOU LOOK AT AN INDIVIDUAL DIAGNOSED WITH
19 MULTIPLE THINGS, YOU KNOW, WITH THE INDIVIDUAL DIAGNOSIS
20 OR DO THE DIAGNOSES SORT OF HAVE A COMBINATION EFFECT?

21 A I WOULD SAY THAT THEY HAVE A COMBINATION EFFECT.
22 I THINK IT'S IMPORTANT TO LOOK AT IT IN THAT WAY BECAUSE
23 THESE ARE ALL THE FACTORS THAT PLAY INTO AN INDIVIDUAL'S
24 BEHAVIOR. THESE THINGS DON'T NECESSARILY ACT IN
25 ISOLATION. IT'S A CUMULATIVE OR SYNERGISTIC EFFECT,

1 ESSENTIALLY, ON HOW THEY AFFECT A PERSON.

2 Q NOW, YOU WERE HERE PRETTY MUCH ALL OF YESTERDAY;
3 RIGHT?

4 A YES.

5 Q DID YOU HEAR THE JUDGE'S QUESTIONS TO DR. PHENIX
6 ABOUT IF YOU WERE TO TAKE AWAY THE PARAPHILIA NOT
7 OTHERWISE SPECIFIED DIAGNOSIS FROM MR. ANTONE, WOULD YOU
8 STILL -- WELL, THE QUESTION WAS, WOULD SHE STILL HAVE AN
9 OPINION AS TO WHETHER HE HAD A SERIOUS MENTAL ILLNESS,
10 BUT THE QUESTION FOR YOU IS, IF YOU WERE TO TAKE AWAY
11 THAT PARAPHILIA NOT OTHERWISE SPECIFIED DIAGNOSIS AND THE
12 TWO SPECIFIERS, DO YOU HAVE AN OPINION AS TO WHETHER MR.
13 ANTONE WOULD STILL HAVE A SERIOUS MENTAL ILLNESS,
14 ABNORMALITY OR DISORDER?

15 A YES. IT WOULD STILL BE MY OPINION THAT HE SUFFERS
16 FROM SERIOUS MENTAL ILLNESS, ABNORMALITY OR DISORDER.

17 Q AND WOULD THAT ABNORMALITY OR DISORDER CAUSE HIM TO
18 HAVE SERIOUS DIFFICULTY REFRAINING?

19 A YES, IT'S MY OPINION THAT IT WOULD.

20 Q AND CONSEQUENTLY, HE WOULD THEN BE, IN YOUR OPINION,
21 CONSIDERED SEXUALLY DANGEROUS?

22 A YES. IT'S MY OPINION THAT HE WOULD STILL REMAIN
23 SEXUALLY DANGEROUS EVEN WITH JUST THAT ANTISOCIAL
24 PERSONALITY DIAGNOSIS.

25 Q WOULD YOU CONSIDER THE POLYSUBSTANCE DEPENDENCE IN

1 CONJUNCTION WITH THAT?

2 A I CERTAINLY WOULD IN MR. ANTONE'S CASE. IT'S AN
3 IMPORTANT ASPECT OF HIS OFFENDING. I DIDN'T HAVE THE
4 OPPORTUNITY TO INTERVIEW HIM, BUT I BELIEVE THAT IN MOST,
5 IF NOT ALL OF THE OFFENSES, THAT SUBSTANCE ABUSE PLAYED A
6 FACTOR.

7 Q DID YOU CONSIDER OTHER DIAGNOSES IN FORMULATING YOUR
8 REPORT?

9 A I DID. MAY I GET SOME MORE WATER?

10 Q SURE.

11 THE COURT: CERTAINLY.

12 MR. BREDEBERG:

13 Q SO MY QUESTION WAS DID YOU CONSIDER OTHER DIAGNOSES
14 IN YOUR EVALUATION OF MR. ANTONE?

15 A YES, I DID.

16 Q WHAT WERE THEY?

17 A I CONSIDERED WHETHER PEDOPHILIA WAS APPLICABLE TO MR.
18 ANTONE BECAUSE OF THE FACT THAT HE HAD OFFENDED AGAINST
19 MINORS. HOWEVER; I DETERMINED THAT THE AGE RANGE OR THE
20 POOL OF VICTIMS, SO TO SPEAK, WAS MORE CONSISTENT WITH A
21 DIAGNOSIS OF HEBEPHILIA AS OPPOSED TO PEDOPHILIA, SO I
22 DECIDED NOT TO RENDER A DIAGNOSIS OF PEDOPHILIA.

23 Q OKAY. DID YOU CONSIDER ANY OTHER DIAGNOSIS?

24 A I ALSO CONSIDERED A DIAGNOSIS OF DEPRESSION. MR.
25 ANTONE HAD PREVIOUSLY BEEN TREATED FOR DEPRESSION AND

1 HAD -- THERE WAS A HISTORY OF PRIOR SUICIDE ATTEMPTS AND
2 GESTURES BETWEEN THE AGES OF 16 AND 20, AND HE HAD BEEN
3 TAKING PSYCHOTROPIC MEDICATION FOR A PERIOD OF TIME.
4 HOWEVER, AT THE TIME THAT I HAD DONE MY REPORT, IT HAD
5 BEEN MANY YEARS SINCE MR. ANTONE HAD TAKEN MEDICATION.
6 THERE WAS NO RECURRENCE OF THAT SUICIDALITY IN TERMS OF
7 GESTURES OR ATTEMPTS SINCE THE AGE OF 20, SO I DETERMINED
8 THAT A DIAGNOSIS OF DEPRESSION WAS NOT APPROPRIATE AT
9 THAT TIME, THAT HE WAS NOT SUFFERING FROM SYMPTOMS --
10 CLINICALLY SIGNIFICANT SYMPTOMS OF DEPRESSION AT THE TIME
11 THAT I DID MY REPORT.

12 Q WOULD IT BE ACCURATE TO HAVE IDENTIFIED THAT
13 DIAGNOSIS BY HISTORY OR --

14 A IT CERTAINLY COULD. ONE CAN LIST IT, IN TERMS OF THE
15 DIAGNOSIS, ONE CAN LIST DEPRESSION BY HISTORY. IN MY
16 CASE, I JUST SIMPLY CHOOSE TO DESCRIBE THAT PERIOD OF
17 DEPRESSION AND THE SUICIDE ATTEMPTS IN THE BODY OF MY
18 REPORT, BUT I DIDN'T ACTUALLY RENDER IT AS A DIAGNOSIS,
19 BUT THAT IS CERTAINLY AN OPTION.

20 Q DID YOU CONSIDER ANY OTHER DIAGNOSES?

21 A I ALSO CONSIDERED A DIAGNOSIS OF BORDERLINE
22 PERSONALITY DISORDER. ONE OF THE MORE COMMON
23 CHARACTERISTICS OF THAT DISORDER IS WRIST CUTTING, AND
24 MR. ANTONE HAD SOME -- THERE WAS SOME DOCUMENTATION
25 INDICATING THAT HE HAD ENGAGED IN SUCH BEHAVIORS IN THE

1 PAST. SO I LOOKED AT BORDERLINE PERSONALITY DISORDER TO
2 SEE IF IT WOULD BE APPLICABLE TO HIM.

3 Q AND WHAT DID YOU DETERMINE?

4 A I DETERMINED THAT IT WAS NOT, ALTHOUGH MR. ANTONE HAD
5 ENGAGED IN THESE TYPES OF BEHAVIORS AND HAD ENGAGED OR
6 HAD EXPERIENCED PERHAPS SOME OF THE CHARACTERISTICS OF
7 BORDERLINE PERSONALITY DISORDER WHEN HE WAS YOUNGER,
8 MAYBE BETWEEN THE AGES OF 16 AND 20, SOME OF THOSE
9 RECURRENT THOUGHTS OF SUICIDE, SOME OF THAT MOOD
10 INSTABILITY, SOME OF THOSE GESTURES LIKE THE WRIST
11 CUTTING.

12 THE RECORDS THAT I HAD TO REVIEW INDICATED THAT
13 THOSE REALLY OCCURRED ONLY DURING THE AGES OF 16 AND 20,
14 PER SE. THERE WAS NO EVIDENCE OF ANY OF THOSE BEHAVIORS
15 DURING HIS PERIOD OF INCARCERATION IN THE BUREAU OF
16 PRISONS. AND WE ARE COMING UP ON APPROXIMATELY 12 YEARS
17 OF THAT NOW.

18 BORDERLINE PERSONALITY DISORDER, IF YOU HAVE EVER
19 WORKED WITH ONE OR HAD TO DEAL WITH ONE ON A CLINICAL
20 BASIS, THOSE INDIVIDUALS ARE FREQUENTLY AND TYPICALLY IN
21 SOME SORT OF CRISIS, SOME SORT OF PERSONAL CRISIS,
22 THOUGHTS OF SUICIDE, WANTING TO HURT THEMSELVES. THEY
23 NEED FREQUENT REDIRECTION OR FREQUENT CONTACT FROM
24 PSYCHOLOGISTS.

25 AND THAT HASN'T BEEN THE CASE WITH MR. ANTONE.

1 ESSENTIALLY HE HAS BEEN ABLE TO DO OKAY IN THE B.O.P.
2 THERE HAS BEEN NO EVIDENCE OF THESE TYPES OF BEHAVIORS.
3 AND WITH BORDERLINE PERSONALITY DISORDER, YOU WOULD
4 EXPECT THAT ACROSS THE PERSON'S LIFETIME. YOU WOULDN'T
5 EXPECT THOSE SYMPTOMS TO JUST STOP WHEN A PERSON REACHES
6 ADULTHOOD.

7 Q DID YOU CONSIDER ANY OTHER DIAGNOSES?

8 A NO, I DID NOT.

9 Q DID -- SO YOU DIDN'T CONSIDER FROTTEURISM?

10 A NO, I DID NOT.

11 Q AND WHY WOULDN'T YOU HAVE CONSIDERED FROTTEURISM?

12 A WELL, FROTTEURISM, IT'S A DIAGNOSIS -- IT'S A
13 PARAPHILIA. IT'S LISTED IN THE DSM-IV. BUT FROTTEURISM
14 IS ESSENTIALLY WHEN AN INDIVIDUAL RUBS HIS GENITALS UP
15 AGAINST A NON-CONSENTING PERSON OR FONDLES THE PERSON,
16 AND IT'S TYPICALLY DONE IN A CROWDED AREA SUCH AS A BUS
17 OR SUBWAY OR A CONCERT OR A SHOPPING CENTER. YOU KNOW,
18 IT'S TYPICALLY DONE IN A PUBLIC PLACE, AND IT'S DONE
19 USUALLY ANONYMOUSLY AND VERY QUICKLY.

20 IF YOU LOOK -- EXCUSE THE EXPRESSION -- IT'S ALMOST
21 LIKE A HIT AND RUN TYPE OF OFFENSE. A PERSON WILL GO UP
22 TO A PERSON, ANOTHER PERSON, AND COMMIT THE ACT, WHETHER
23 IT BE RUBBING THE GENITALS OR QUICK FONDLING, AND THEN
24 WILL GO AWAY, AND BEFORE THE VICTIM KNOWS WHAT HAS
25 HAPPENED, THE PERSON WHO HAS ENGAGED IN THE FROTTEURISM

1 HAS ALREADY DISAPPEARED AND HAS GONE AWAY SO AS TO AVOID
2 IDENTIFICATION, PROSECUTION, THINGS OF THAT NATURE.

3 SO I REALLY DIDN'T THINK THAT FROTTEURISM REALLY
4 CAPTURED THE EXTENT OF MR. ANTONE'S SEXUAL DEVIANCE AND
5 OFFENSE BEHAVIOR. IT REALLY DOESN'T EVEN SCRATCH THE
6 SURFACE.

7 IT WOULD BE LIKE GOING TO THE DOCTOR AND FINDING OUT
8 THAT YOU HAVE A MALIGNANT BRAIN TUMOR AND THE DOCTOR
9 LISTS HEADACHES AS THE PROBLEM IN THE CHART. YOU KNOW,
10 IT'S REALLY MISSING THE BIG PICTURE, I THINK.

11 Q SO TELL ME IF THIS IS AN INCORRECT CHARACTERIZATION.
12 SO YOU DON'T HAVE THE IDEA OF LESSER INCLUDED OFFENSES IN
13 THE WORLD OF PSYCHOLOGICAL DIAGNOSES?

14 A I AM SORRY. CAN YOU REPEAT THE QUESTION?

15 Q HAVE YOU EVER HEARD OF THE TERM OF ART, LESSER
16 INCLUDED OFFENSE?

17 A I HAVE HEARD IT.

18 Q I WILL JUST WITHDRAW THE QUESTION.

19 SO ARE THOSE ALL OF THE DIAGNOSES THEN THAT YOU
20 CONSIDERED?

21 A YES.

22 Q SO THEN DID YOU CONSIDER THE THIRD QUESTION, THE
23 THIRD PRONG, WHETHER MR. ANTONE WOULD HAVE SERIOUS
24 DIFFICULTY REFRAINING FROM SEXUALLY VIOLENT CONDUCT OR
25 CHILD MOLESTATION?

1 A YES, I DID.

2 Q WHAT DID YOU CONSIDER IN DETERMINING THAT?

3 A WELL, WHEN I CONSIDERED IT, THINKING WHETHER OR NOT
4 MR. ANTONE WOULD HAVE SERIOUS DIFFICULTY IN REFRAINING
5 FROM SEXUALLY VIOLENT CONDUCT IF RELEASED, I WAS ABLE TO
6 DETERMINE THAT HE ALREADY HAS HAD SERIOUS DIFFICULTY IN
7 REFRAINING FROM SEXUALLY VIOLENT CONDUCT.

8 MR. ANTONE WAS CONVICTED IN 1990 OF RAPING V.R.
9 NUMBER 1, AND HE WAS CONVICTED -- HE WAS PUNISHED,
10 SANCTIONED, AND DESPITE THAT INTERACTION WITH THE
11 CRIMINAL JUSTICE SYSTEM, HE STILL CONTINUED TO ENGAGE IN
12 SIMILAR BEHAVIORS OVER A PERIOD OF TIME. SO THAT WAS
13 SIGNATURE TO ME IN TERMS OF MAKING THAT DETERMINATION AS
14 TO WHETHER OR NOT HE WOULD HAVE SERIOUS DIFFICULTY IN
15 REFRAINING.

16 I ALSO LOOKED AT HIS PATTERN OF OFFENSES OVER TIME.
17 THERE WERE NUMEROUS OFFENSES THAT OCCURRED AFTER THAT
18 INITIAL 1990 CONVICTION, AND IF WE LOOK AT THE
19 CHRONOLOGY, THERE APPEARS TO BE A LITTLE BIT OF AN UPTICK
20 IN TERMS OF THE FREQUENCY WITH WHICH HE IS ENGAGING IN
21 THESE BEHAVIORS BEFORE HE WAS FINALLY APPREHENDED IN
22 1997.

23 A NUMBER OF THEM OCCUR IN THAT 14 MONTHS WINDOW FROM
24 JULY OF 1996 UP UNTIL NOVEMBER OF 1997, SO THAT INCREASE
25 IN FREQUENCY SUGGESTS TO ME THAT THERE IS SOME SERIOUS

1 DIFFICULTY IN REFRAINING FROM SEXUALLY VIOLENT CONDUCT OR
2 CHILD MOLESTATION.

3 ANOTHER ITEM OF INFORMATION THAT I CONSIDERED WAS
4 HIS SCORE ON THE ACTUARIAL, THE STATIC-99R WHICH MY
5 SCORING INDICATED THAT HE WAS AT THE HIGH RISK OF
6 OFFENDING.

7 SO, THAT IN AND OF ITSELF WAS A SUGGESTION OR AN
8 INDICATOR THAT HE WOULD HAVE SERIOUS DIFFICULTY IN
9 REFRAINING FROM SEXUALLY VIOLENT CONDUCT OR CHILD
10 MOLESTATION.

11 Q WOULD IT ASSIST YOUR TESTIMONY IF WE ARE GOING TO
12 TALK ABOUT THE STATIC-99R AND YOUR SCORING, WOULD IT
13 ASSIST YOU IF YOUR SCORE SHEET WAS UP AS AN EXHIBIT UP ON
14 THE SCREEN?

15 A YES.

16 Q WE HAVE PULLED UP WHAT HAS BEEN IDENTIFIED AS B.O.P.
17 2170. DO YOU RECOGNIZE THAT DOCUMENT?

18 A YES, I DO.

19 Q WHAT IS THAT?

20 A THAT IS THE CODING FORM THAT I USED FOR MR. ANTONE
21 FOR THE STATIC-99R.

22 Q NOW, AGAIN, THE QUESTION WAS WERE YOU HERE YESTERDAY
23 FOR THE PORTION OF DR. PHENIX'S TESTIMONY WHERE MR.
24 ROYSTER WENT THROUGH HER SCORING WITH HER?

25 A YES.

1 Q AND IS YOUR SCORE SHEET CONSISTENT WITH HERS?

2 A IT IS NOT.

3 Q AND HOW IS IT NOT CONSISTENT OR NOT THE SAME AS HERS?

4 A THERE IS ONE ITEM IN WHICH OUR SCORES ARE DIFFERENT.
5 THAT WOULD BE ITEM NUMBER FIVE.

6 Q AND WHAT IS THAT?

7 A THAT REFERS TO PRIOR SEX OFFENSES.

8 Q AND HOW IS IT DIFFERENT?

9 A I ASSIGNED A SCORE OF THREE WHEREAS DR. PHENIX
10 ASSIGNED A SCORE OF TWO.

11 Q AND DO YOU STAND BY YOUR SCORE OF THREE?

12 A I DO.

13 Q AFTER LISTENING TO HER TESTIMONY YESTERDAY?

14 A I DO.

15 Q WHY IS THAT?

16 A IT WAS MY DETERMINATION THAT MR. ANTONE HAD SIX OR
17 GREATER PRIOR CHARGES RELATED TO SEX OFFENDING.

18 Q AND SO AS SHE EXPLAINED YESTERDAY, YOU TAKE -- WELL,
19 CAN YOU EXPLAIN HOW YOU DO THE SCORING?

20 A SURE. WITH THAT PARTICULAR ITEM, YOU LOOK AT A
21 NUMBER -- AT THE PRIOR SEX OFFENSES. YOU LOOK AT THE
22 CHARGES AND CONVICTIONS, AND YOU TOTAL UP EACH, THE TOTAL
23 NUMBER OF CHARGES AND CONVICTIONS, AND THEN YOU LOOK ON
24 THIS PAGE OR ON THIS LITTLE CHART, AND THE SCORE THAT IS
25 ASSIGNED FOR THAT ITEM IS DEPENDENT ON WHICH ONE IS

1 GREATER, SO TO SPEAK, WHETHER IT BE CHARGES OR
2 CONVICTIONS.

3 IF AN INDIVIDUAL HAS, FOR EXAMPLE, TWO TO THREE
4 CONVICTIONS, AND SIX PLUS CHARGES, THEN YOU WOULD TAKE
5 THE GREATER BEING THE SIX PLUS CHARGES, AND THAT WOULD
6 CORRESPOND TO A SCORE OF THREE.

7 Q THAT IS WHAT YOU DID IN THIS CASE?

8 A I DID.

9 Q HOW DID YOU COME ABOUT THE CONCLUSION THAT THERE WERE
10 SIX PLUS CHARGES?

11 A I CAME ABOUT THAT CONCLUSION BY REVIEWING MR.
12 ANTONE'S PRESENTENCE INVESTIGATION REPORT WHICH DETAILED
13 PRIOR CHARGES PERTAINING TO HIS SEXUAL OFFENDING.

14 Q AND YOU CAME UP WITH SIX?

15 A I CAME UP WITH GREATER THAN SIX.

16 Q AND SO IT IS YOUR TESTIMONY THAT THIS IS AN ACCURATE
17 SCORE?

18 A IT IS.

19 Q NOW, --

20 THE COURT: MR. BREDENBERG, LET ME INTERJECT
21 JUST TO NOTE THAT THIS DOCUMENT, BATES NUMBER 2170 DOES
22 APPEAR AS THE LAST PAGE OF GOVERNMENT'S EXHIBIT 6. VERY
23 GOOD, SIR.

24 MR. BREDENBERG: THANK YOU, YOUR HONOR.

25 Q NOW, LET'S JUST ASSUME FOR SAKE OF ARGUMENT THAT THIS

1 SCORE WAS ACTUALLY THE WAY THAT DR. PHENIX PRESENTED IT
2 AND THAT THE FINAL SCORE, THE TOTAL SCORE, WAS A FIVE.

3 A OKAY.

4 Q IF THAT WERE A FIVE, WOULD THAT AFFECT YOUR OVERALL
5 OPINION IN THIS CASE?

6 A IT WOULD NOT. MY SCORE OF SIX CORRESPONDED TO A
7 CLASSIFICATION OF HIGH RISK. IF IT DID GO DOWN TO A
8 SCORE OF FIVE, THAT WOULD STILL BE INDICATIVE OF MODERATE
9 TO HIGH RISK.

10 SO MY OPINION, ALTHOUGH NOT NECESSARILY GROUNDED
11 JUST TO THE STATIC-99R OVERALL WOULD NOT CHANGE.

12 Q NOW, THERE WAS ALSO SOME TESTIMONY YESTERDAY ABOUT
13 THE FACT THAT MR. ANTONE MAY BE APPROACHING THE AGE OF
14 40?

15 A YES.

16 Q AND IF THAT IS THE CASE, WOULD HIS SCORE GO DOWN EVEN
17 MORE?

18 A YES. WHEN HE TURNS 40, I BELIEVE IT WILL BE IN MAY
19 OF 2012, THEN HIS SCORE WILL DROP ONE POINT.

20 Q AND THEN THAT WOULD, AGAIN, FOR SAKE OF ARGUMENT
21 SAKE, THAT WOULD BE A FOUR?

22 A ASSUMING THAT ITEM NUMBER FIVE WOULD DROP A SCORE OF
23 TWO AND THEN REDUCING IT ONE MORE POINT WITH THE AGE,
24 THEN YES, IT WOULD SCORE A FOUR.

25 Q HOW WOULD THAT AFFECT YOUR OPINION?

1 A IT WOULD NOT CHANGE MY OPINION.

2 Q AND SO IN ORDER -- JUST TO CLARIFY IN YOUR SCORING,
3 YOU RELIED ON THE REPORT IN THE PSR; CORRECT?

4 A THAT'S CORRECT.

5 Q IS THAT SOMETHING THAT IS ORDINARILY RELIED ON BY
6 DOCTORS IN YOUR FIELD?

7 A YES, I WOULD SAY SO. I WOULD SAY THAT THE MAJORITY
8 OF INDIVIDUALS WILL LOOK AT THAT AS IT'S TYPICALLY A VERY
9 COMPREHENSIVE DOCUMENT PERTAINING TO CRIMINAL HISTORY.

10 Q AND ARE THERE OTHER DOCUMENTS THAT PROFESSIONALS IN
11 YOUR FIELD MAY RELY ON IN DETERMINING THE INFORMATION
12 NEEDED TO SCORE NUMBER FIVE?

13 A YES.

14 Q SUCH AS?

15 A THOSE COULD INCLUDE INDIVIDUAL ARREST REPORTS, POLICE
16 REPORTS, THINGS OF THAT NATURE.

17 Q IS IT POSSIBLE DR. PHENIX MAY HAVE USED THOSE TYPES
18 OF THINGS IN HER SCORING?

19 A IT'S POSSIBLE.

20 Q DID YOU PERSONALLY SEE A DISCREPANCY WHEN YOU WERE
21 DOING YOUR SCORING?

22 A I DO NOT.

23 Q WHAT ELSE DID YOU CONSIDER IN DETERMINING WHETHER MR.
24 ANTONE WOULD HAVE A SERIOUS DIFFICULTY REFRAINING FROM
25 SEXUALLY VIOLENT CONDUCT OR CHILD MOLESTATION?

1 A I ALSO CONSIDERED THAT MR. ANTONE HASN'T HAD ANY SEX
2 OFFENDER TREATMENT. PSYCHOLOGISTS WILL TELL YOU THAT THE
3 BEST PREDICTOR OF FUTURE BEHAVIOR IS PAST BEHAVIOR. AND
4 IN THE ABSENCE OF ANY TREATMENT OR INTERVENTION TO
5 ADDRESS THESE AREAS OF SEXUAL DEVIANCE, I THINK IT'S
6 HIGHLY LIKELY THAT MR. ANTONE WILL ENGAGE IN SIMILAR ACTS
7 IF RELEASED TO THE COMMUNITY.

8 Q DID MR. ANTONE HAVE SEX OFFENDER TREATMENT AVAILABLE
9 TO HIM AT ANY TIME?

10 A YES, HE DID.

11 Q AND WHAT WAS THAT?

12 A FOLLOWING HIS CERTIFICATION IN FEBRUARY OF 2007, HE
13 WAS DETAINED AND HAS BEEN DETAINED AT THE FEDERAL
14 CORRECTIONAL INSTITUTION IN THE MARYLAND UNIT, AND SEX
15 OFFENDER TREATMENT HAS BEEN AVAILABLE TO INDIVIDUALS IN
16 THAT UNIT SINCE THAT TIME.

17 Q AND WOULD MR. ANTONE HAVE BEEN ACCEPTED INTO THE
18 PROGRAM OR ALLOWED TO PARTICIPATE IN TREATMENT IF HE HAD
19 SO CHOSEN?

20 A YES, HE WOULD HAVE.

21 Q BUT HE DIDN'T DO THAT?

22 A HE DID NOT.

23 Q WHAT OTHER FACTORS DID YOU CONSIDER IN DETERMINING
24 PRONG THREE?

25 A WELL, TO REFRESH MY MEMORY HERE TO THE ONES I HAVE

1 ALREADY DISCUSSED, THOSE WOULD BE THE PATTERN OF
2 OFFENDING OVER YEARS, THE ACTUARIAL RESULTS, THE FACT
3 THAT HE HASN'T HAD SEX OFFENDER TREATMENT, THE FACT THAT
4 HE HAS CONTINUED TO ENGAGE IN THESE BEHAVIORS, THESE
5 SEXUALLY VIOLENT ACTS AND CHILD MOLESTATION DESPITE PRIOR
6 SANCTION FROM THE COURT.

7 ALSO THE FACT, ALTHOUGH HE HAS RECEIVED SOME
8 TREATMENT AND EDUCATION REGARDING HIS PROBLEMS WITH
9 SUBSTANCE ABUSE, I DON'T THINK THAT THOSE HAVE BEEN
10 SUFFICIENTLY ADDRESSED TO DATE, SO THAT IS ANOTHER AREA
11 OF CONCERN THAT MR. ANTONE HAS IN THAT IF HIS
12 DIFFICULTIES WITH SUBSTANCE ABUSE DEPENDENCE HAVEN'T BEEN
13 CORRECTED, SO TO SPEAK, THEN THAT WILL BE A CONTRIBUTING
14 FACTOR FOR HIM WITH POSSIBLE FUTURE OFFENDING.

15 Q DID YOU CONSIDER HIS SOCIAL INFLUENCES?

16 A I DID. I ALSO CONSIDERED THOSE, IN A SENSE, MOST, IF
17 NOT ALL, WITHOUT HAVING THE OPPORTUNITY TO INTERVIEW HIM,
18 IT APPEARS THAT MOST OF THE INFLUENCES THAT HE HAS HAD IN
19 HIS LIFE HAVE HAD SOME NEGATIVE EFFECT ON HIM, WHETHER IT
20 BE HIS MOTHER, HIS GIRLFRIEND. WE HAVE HEARD ABOUT AND
21 THE RECORD CERTAINLY INDICATES THAT THERE WAS AN
22 EXTENSIVE PROBLEM WITH SUBSTANCE ABUSE IN HIS IMMEDIATE
23 FAMILY AND WITH THOSE THAT HE ASSOCIATED WITH. SOME OF
24 THOSE THAT HAVE BEEN CLOSE TO HIM, INCLUDING HIS
25 EX-GIRLFRIEND, AND I BELIEVE HIS BROTHER, HAVE BEEN

1 INCARCERATED.

2 SO IT JUST DOESN'T APPEAR THAT HE HAS HAD VERY MANY,
3 IF ANY, INFLUENCES IN HIS LIFE THAT HAVE BEEN POSITIVE.
4 AND MY CONCERN WOULD BE THAT GOING BACK TO THAT
5 ENVIRONMENT, GOING BACK TO SOME OF THOSE INFLUENCES,
6 COULD HAVE A NEGATIVE AFFECT ON HIM.

7 Q AND IS IT YOUR DETERMINATION BASED ON WHAT YOU KNOW
8 THAT HE WOULD BE GOING BACK TO THAT SAME ENVIRONMENT?

9 A HE SPOKE YESTERDAY ABOUT GOING BACK TO ARIZONA, AND
10 HE MENTIONED TUCSON, AND I AM NOT SURE WHAT THE PROXIMITY
11 IS OF TUCSON TO THE TRIBAL NATION, BUT IT DIDN'T APPEAR
12 TO BE A VERY THOUGHT OUT PLAN NECESSARILY AS TO WHERE HE
13 WOULD BE GOING AND WITH WHOM HE WOULD BE LIVING.

14 HE MENTIONED HIS SISTER, BUT I BELIEVE HIS SISTER
15 HAS ALSO HAD SOME DIFFICULTIES IN HER LIFE AND MIGHT NOT
16 BE THE BEST INFLUENCE FOR HIM AT THIS TIME.

17 Q WERE YOU HERE FOR HIS TESTIMONY YESTERDAY?

18 A YES, I WAS.

19 Q DID YOU HEAR HIM SAY THAT HE KNOWS THAT THERE IS
20 ALWAYS A CHANCE HE MIGHT DRINK?

21 A YES.

22 Q AND DID THAT AFFECT YOUR OPINION?

23 A WELL, MY OPINION -- I ALREADY FORMULATED MY OPINION,
24 BUT IT CERTAINLY REINFORCED OR SOLIDIFIED MY OPINION TO
25 HEAR HIM SAY THAT THAT WAS A POSSIBILITY, REINFORCE MY

1 OPINION REGARDING HIS DIAGNOSIS OF DEPENDENCE AND THE
2 EXTENT TO WHICH HIS PROBLEMS WITH ALCOHOL AND DRUGS COULD
3 CONTRIBUTE TO FUTURE OFFENDING.

4 Q YOU HAVE EXPRESSED YOUR OPINION ON THE THREE PRONGS.
5 LET ME JUST SUMMARIZE THAT FOR YOU. HAVE YOU FORMULATED
6 AN OPINION AS A RESULT OF YOUR EVALUATIONS, THE TESTIMONY
7 YOU HAVE HEARD, HAVE YOU FORMULATED AN OPINION AS TO
8 WHETHER MR. ANTONE IS PRESENTLY SUFFERING FROM A SERIOUS
9 MENTAL ILLNESS, ABNORMALITY, OR DISORDER AS A RESULT OF
10 WHICH HE WOULD HAVE SERIOUS DIFFICULTY REFRAINING FROM
11 SEXUALLY VIOLENT CONDUCT OR CHILD MOLESTATION?

12 A YES.

13 Q AND WHAT IS THAT OPINION?

14 A MY OPINION IS THAT HE HAS ENGAGED IN SEXUALLY VIOLENT
15 CONDUCT AND CHILD MOLESTATION AND THAT HE SUFFERS FROM
16 SERIOUS MENTAL ILLNESSES, ABNORMAL DISORDERS THAT WOULD
17 CAUSE HIM TO EXPERIENCE SERIOUS DIFFICULTY IN REFRAINING
18 FROM SEXUALLY VIOLENT CONDUCT AND CHILD MOLESTATION IF HE
19 WAS RELEASED TO THE COMMUNITY.

20 Q DID YOU CONSIDER -- DID YOU READ DR. PHENIX'S
21 EVALUATION?

22 A I DID.

23 Q ARE HER ASSESSMENTS AND OPINIONS CONSISTENT GENERALLY
24 WITH YOURS?

25 A YES, THEY ARE.

1 Q HAVE YOU READ THE FORENSIC EVALUATION PREPARED BY DR.
2 DAUM?

3 A YES, I HAVE.

4 Q AND ARE HIS ASSESSMENTS AND OPINIONS CONSISTENT WITH
5 YOURS?

6 A NO, THEY ARE NOT.

7 Q HOW ARE THEY NOT?

8 A DR. DAUM DIFFERED IN TERMS OF HIS DIAGNOSES. I
9 BELIEVE THAT HE ASSIGNED A DIAGNOSIS OF FROTTEURISM AND
10 BORDERLINE PERSONALITY DISORDER WITH ANTISOCIAL FEATURES.
11 I DON'T RECALL OFF THE TOP OF MY HEAD IF THERE WAS
12 ANOTHER DIAGNOSIS THAT HE RENDERED, BUT OVERALL, THE BIG
13 PICTURE, HE OPINED THAT MR. ANTONE DID NOT MEET CRITERIA
14 FOR CIVIL COMMITMENT, AND THAT WOULD BE THE MAJOR
15 DIFFERENCE BETWEEN MY REPORT AND HIS.

16 MR. BREDENBERG: THANK YOU, DOCTOR. NO
17 FURTHER QUESTIONS AT THIS TIME.

18 THE COURT: VERY GOOD, SIR.

19 COUNSEL FOR THE RESPONDENT, MR. ROSS.

20 MR. ROSS: THANK YOU, YOUR HONOR.

21 CROSS EXAMINATION BY MR. ROSS:

22 Q DR. GUTIERREZ, PEOPLE CAN CHANGE; RIGHT?

23 A YES, THEY CAN.

24 Q AND THAT IS PART OF THE PSYCHOLOGIST'S JOB TO HELP
25 THEM CHANGE; RIGHT?

1 A I AM SORRY. COULD YOU REPEAT THE QUESTION?

2 Q PART OF THE PSYCHOLOGISTS' JOBS ARE TO HELP PEOPLE
3 CHANGE?

4 A DEPENDING ON THE PSYCHOLOGIST'S JOB, YES.

5 Q NOW, AT THE TIME MR. ANTONE WAS ARRESTED, HE WAS 25
6 YEARS OLD?

7 A THAT'S CORRECT.

8 Q AND ADOLESCENT BRAIN IS WHAT, FROM -- GOES ALL THE
9 WAY UP TO 25?

10 A I DON'T KNOW THAT IT GOES PRECISELY TO 25, BUT --

11 Q CLOSE?

12 A THERE ARE CHANGES IN THE BRAIN THAT OCCUR CERTAINLY
13 THROUGHOUT ADOLESCENCE AND EARLY ADULTHOOD, EARLY 20'S.

14 Q ALL RIGHT. NOW, IF WE ACCEPT THE PREMISE THAT PEOPLE
15 CAN CHANGE, THEY CAN CHANGE BY MATURING; FAIR ENOUGH?

16 A I AM SORRY. THEY CAN CHANGE BY?

17 Q MATURING.

18 A MATURING.

19 Q GETTING OLDER?

20 A YES.

21 Q UNDERSTANDING WHAT THEY HAVE DONE IN THE PAST?

22 A YES.

23 Q NOW, YOU HAVE WORKED IN PRISONS, I GUESS, SINCE YOU
24 GRADUATED IN 2001?

25 A THAT'S CORRECT.

1 Q AND PART OF WORKING IN PRISON, YOU COME IN CONTACT
2 WITH INDIVIDUALS WHO ARE INMATES; IS THAT RIGHT?

3 A YES.

4 Q AND SINCE 2001, HOW MANY INMATES HAVE YOU TREATED IN
5 SOME FORM OR FASHION, OR IS IT JUST ABOUT EVALUATIONS?

6 A IT'S NOT JUST ABOUT EVALUATIONS. I WOULDN'T KNOW THE
7 NUMBER OF INDIVIDUALS THAT I HAVE TREATED OFF THE TOP OF
8 MY HEAD, BUT IN ADDITION TO MY DUTIES WHICH ARE
9 ESSENTIALLY TO EVALUATE INDIVIDUALS, I ALSO SERVE AS THE
10 ON-CALL PSYCHOLOGIST APPROXIMATELY ONCE -- ONE WEEK EVERY
11 TWO MONTHS WHERE I AM ON CALL.

12 SO IF THERE IS AN ISSUE WITH INMATES IN THE
13 INSTITUTION, I AM THE ONE THAT HAS TO RESPOND TO THAT.
14 SO IF AN INDIVIDUAL NEEDS TO BE ASSESSED FOR PLACEMENT ON
15 SUICIDE WATCH OR IF THERE IS SOME SORT OF CRISIS
16 INTERVENTION THAT NEEDS TO OCCUR, BRIEF COUNSELING,
17 THINGS OF THAT NATURE, I WOULD BE THE ONE TO DO IT DURING
18 THOSE PERIODS OF TIME.

19 Q NOW, YOUR OFFICE IS AT BUTNER FCI-1?

20 A YES, IT IS.

21 Q AND ARE YOU UP IN THE UNITS WHERE MARYLAND, NORTH
22 CAROLINA, DUKE --

23 A YES. MY OFFICE IS IN THE DUKE UNIT.

24 Q THAT UNIT IS WHERE THEIR EVALUATIONS HAPPEN?

25 A THAT UNIT IS WHERE I DO MY CLINICAL INTERVIEWS, IF I

1 WERE TO DO CLINICAL INTERVIEWS AT THIS TIME. HOWEVER, MY
2 OFFICE USED TO BE ACTUALLY IN MARYLAND UNIT. I BELIEVE
3 AT THE TIME THAT I DID MY FIRST TWO REPORTS OF MR.
4 ANTONE, MY OFFICE WAS IN THE MARYLAND UNIT.

5 Q ALL RIGHT. AND THAT WOULD BE IN 2007?

6 A 2007, BOTH OF THOSE, IF I AM NOT MISTAKEN, MY OFFICE
7 MOVED TWO YEARS AGO, 2009.

8 Q LET'S TALK ABOUT THE FIRST ONE WHICH IS DATED IN
9 FEBRUARY OF 2007 WHICH IS THE PRECERTIFICATION; OKAY?

10 A OKAY.

11 Q NOW, YOU WOULD AGREE WITH ME THAT MR. ANTONE WAS
12 SUPPOSED TO LEAVE THE BUREAU OF PRISONS WITHIN TWO WEEKS
13 OF HIM ARRIVING AT BUTNER?

14 A THAT IS CORRECT.

15 Q AND HE GOT TO THE PRISON ON FEBRUARY 14, 2007?

16 A I DON'T RECALL THE EXACT DATE THAT HE ARRIVED THERE,
17 BUT I BELIEVE IT WAS SOMETIME IN THAT MONTH OF FEBRUARY
18 OF '07.

19 Q AND THIS PERSON WHO WAS SUPPOSED TO LEAVE THE BUREAU
20 OF PRISONS IN TWO MONTHS WAS TAKEN TO THE SHU?

21 A HE MAY HAVE BEEN TAKEN TO SHU OR TO THE MARYLAND
22 ANNEX INITIALLY, BUT I BELIEVE HE WAS WITHIN A SHORT
23 PERIOD OF TIME MOVED TO ONE OF THE GENERAL ROOMS IN THE
24 MARYLAND UNIT.

25 THE COURT: MR. ROSS, BY SHU, I AM ASSUMING

1 YOU MEAN SPECIAL HOUSING UNIT.

2 MR. ROSS: YES. I WAS ABOUT TO ASK THAT.

3 THE COURT: THANK YOU.

4 Q TO AGREE WITH THE COURT, THE SPECIAL HOUSING UNIT?

5 A CORRECT, THE SPECIAL HOUSING UNIT, OR THERE IS A
6 SPECIAL HOUSING UNIT IN BUTNER. IT ACTUALLY IS AT THE
7 LOW INSTITUTION. MAYBE IT'S JUST A MATTER OF SEMANTICS,
8 BUT IT'S CALLED THE MARYLAND ANNEX WHICH IS A LOCKED UNIT
9 SIMILAR TO A SHU, BUT THAT IS WHERE MR. ANTONE WOULD HAVE
10 BEEN.

11 Q WHEN WE SAY LOCKED, AWAY FROM THE POPULATION; RIGHT?

12 A YES.

13 Q LOCKED IN THEIR CELL?

14 A CORRECT.

15 Q FOR 23 HOURS A DAY?

16 A YES.

17 Q AND THIS IS SOMEBODY WHO IS SUPPOSED TO BE RELEASED
18 IN LESS THAN TWO WEEKS FROM THE BUREAU OF PRISONS;
19 CORRECT?

20 A CORRECT.

21 Q AND YOU SPOKE TO MR. ANTONE IN THE ANNEX?

22 A I DON'T RECALL IF I SPOKE TO HIM IN THE ANNEX. I
23 DON'T THINK I DID.

24 Q DO YOU RECALL IF YOU SPOKE TO HIM IN YOUR OFFICE?

25 A I DID SPEAK TO HIM IN MY OFFICE PRIOR TO THE MAY OF

1 2007 REPORT. BUT I DON'T RECALL SPECIFICALLY IF I MET
2 WITH MR. ANTONE FOR THE FIRST TIME WHEN HE WAS IN THE
3 ANNEX.

4 MY REPORT INDICATES THAT THE DATE OF EVALUATION WAS
5 FEBRUARY 21, 2007, SO I WOULD HAVE MET WITH HIM ON THAT
6 DATE, AND I DON'T RECALL IF HE WAS IN THE ANNEX OR JUST
7 IN THE GENERAL MARYLAND UNIT IN A REGULAR ROOM AT THAT
8 TIME.

9 Q SO ON THE 21ST WHICH APPEARS TO BE SEVEN DAYS
10 BEFORE ANTONE WAS SUPPOSED TO BE RELEASED FROM THE BUREAU
11 OF PRISONS; IS THAT CORRECT?

12 A YES.

13 Q NOW, WITH MR. ANTONE, YOU EXPLAINED TO HIM ON THE
14 21ST OF FEBRUARY OF 2007, WHAT YOU WERE THERE TO DO, A
15 PRECERTIFICATION FOR THE ADAM WALSH ACT?

16 A YES, I DID.

17 Q AND WHEN YOU EXPLAINED THAT TO MR. ANTONE, DID YOU
18 EXPLAIN TO HIM THAT THIS WOULD MEAN CIVIL COMMITMENT
19 AFTER HE IS SUPPOSED TO BE RELEASED FROM THE BUREAU OF
20 PRISONS?

21 A I EXPLAINED TO HIM THAT CIVIL COMMITMENT WAS A
22 POSSIBILITY FOLLOWING CERTIFICATION BECAUSE I KNEW THAT
23 EVENTUALLY THERE WOULD BE A TRIAL TO DETERMINE WHETHER OR
24 NOT HE WOULD BE CIVILLY COMMITTED, BUT I EXPLAINED TO HIM
25 THAT THE CERTIFICATION, IF IT OCCURRED IN HIS CASE, WOULD

1 BE THE FIRST STEP TOWARDS POSSIBLE CIVIL COMMITMENT.

2 Q WHICH MEANT -- AND I PRESUME YOU EXPLAINED TO HIM
3 THAT MEANT THAT HE WOULD BE KEPT AFTER HE WAS SUPPOSED TO
4 BE RELEASED FROM THE BUREAU OF PRISONS?

5 A I DID EXPLAIN THAT TO HIM, YES.

6 Q AND YOU EXPLAINED TO HIM THAT ANYTHING THAT HE SAID
7 TO YOU WOULD NOT BE HELD IN CONFIDENCE. YOU DID SAY
8 THAT; RIGHT?

9 A I DID EXPLAIN THOSE LIMITS OF CONFIDENTIALITY.

10 Q AND YOU EXPLAINED TO HIM THAT YOU WORKED FOR THE
11 BUREAU OF PRISONS?

12 A YES.

13 Q AND MR. ANTONE, HE DIDN'T CUSS AT YOU?

14 A NO, HE DID NOT.

15 Q HE DIDN'T YELL AT YOU?

16 A NO, HE DID NOT.

17 Q HE DIDN'T BREAK DOWN AND CRY IN FRONT OF YOU?

18 A NO, HE DID NOT.

19 Q HE DID NOT SEXUALLY ASSAULT YOU?

20 A NO, HE DID NOT.

21 Q NOW, WITH YOU BEING ON THE MARYLAND UNIT AT THAT
22 TIME, DO YOU KNOW HOW MANY PEOPLE WERE THERE IN ABOUT
23 2007?

24 A I DON'T KNOW SPECIFICALLY HOW MANY THERE WERE AT THAT
25 TIME.

1 Q AT ONE TIME, ARE YOU AWARE THERE WAS UPWARDS OF CLOSE
2 TO 100 PEOPLE IN THE MARYLAND UNIT?

3 A YES, I BELIEVE SO. I THINK THAT WAS A LITTLE LATER
4 ON THOUGH AFTER MORE INDIVIDUALS HAD BEEN CERTIFIED.
5 I THINK MR. ANTONE WAS FAIRLY EARLY ON IN TERMS OF BEING
6 CERTIFIED COMPARED TO SOME OF THE OTHER INDIVIDUALS, SO I
7 DON'T THINK THAT THERE WERE THAT MANY PEOPLE WHEN HE WAS
8 INITIALLY CERTIFIED.

9 Q EARLY ON, THE FIRST FEW MONTHS OF THE 4248 PRE-CERTS,
10 THAT IS WHAT YOU ARE TALKING ABOUT; RIGHT?

11 A YES.

12 Q AND AROUND THAT TIME, 2006 AND EARLY 2007, THERE WERE
13 ABOUT 40 PEOPLE ON THE MARYLAND UNIT?

14 A I DON'T KNOW FOR SURE, BUT THAT IS POSSIBLE.

15 Q NOW, AT THE TIME YOU SPOKE TO MR. ANTONE ON FEBRUARY
16 21, 2007, HAD YOU HAD AN OPPORTUNITY TO REVIEW HIS PRISON
17 RECORDS?

18 A YES, I HAD.

19 Q HAD YOU HAD AN OPPORTUNITY TO REVIEW THE FACT THAT HE
20 HAD ISSUES RELATING TO ALCOHOL AND OTHER SUBSTANCES?

21 A YES.

22 Q AND AT THE TIME THAT YOU REVIEWED THIS INFORMATION ON
23 FEBRUARY 21, 2007, YOU WERE ABLE TO TAKE NOTICE THAT MR.
24 ANTONE HAD NOT HAD ANY ALCOHOL FOR THOSE MANY YEARS?

25 A I HAD NOTICED THAT HE HAD NOT BEEN SANCTIONED OR

1 DISCOVERED DRINKING ALCOHOL DURING THOSE YEARS, YES.

2 Q NOW, LET'S TALK ABOUT THAT FOR A MOMENT. YOU
3 QUALIFIED THAT HE HAD NOT BEEN SANCTIONED. YOU ARE
4 AWARE, BECAUSE YOU WORK AT THE PRISON, THAT THEY DO HAVE
5 A BREATHALYZER THAT CHECKS THE INMATES FOR ALCOHOL?

6 A YES.

7 Q AND THEY ACTUALLY KEEP A LOG BOOK OF THAT INFORMATION
8 ON THE UNITS?

9 A YES.

10 Q AND ON THE UNITS, I AM TALKING ABOUT MARYLAND UNIT,
11 HAVE YOU HAD AN OPPORTUNITY TO LOOK AT THE LOG BOOK TO
12 SEE HOW MANY TIMES MR. ANTONE HAS BEEN CHECKED FOR THAT
13 BREATHALYZER?

14 A I HAVE NOT.

15 Q YOU ARE AWARE, BECAUSE YOU WORK AT THE BUREAU OF
16 PRISONS, EVEN THOUGH YOU SAY IT'S RATHER LIMITED, THAT
17 PEOPLE ARE ABLE TO GET ALCOHOL, PEOPLE DO TURN UP
18 POSITIVE FOR ALCOHOL?

19 A THAT IS TRUE.

20 Q THEY WERE VERY CREATIVE IN THE WAY IN WHICH THEY MAKE
21 ALCOHOL?

22 A YES, THEY ARE.

23 Q VERY CREATIVE IN THE THE WAY IN WHICH THEY HIDE THE
24 ALCOHOL?

25 A YES.

1 Q NOW, WITH MR. ANTONE, YOU HAD AN OPPORTUNITY TO
2 REVIEW HIS SANCTIONS OVER THE YEARS?

3 A YES.

4 Q YOU HAVE HAD OPPORTUNITIES IN THE PAST TO REVIEW
5 OTHER PERSONS SANCTIONS OVER THE YEARS?

6 A YES.

7 Q AND THEY CAN VARY?

8 A CERTAINLY.

9 Q FROM PERSON TO PERSON?

10 A THAT'S CORRECT.

11 Q SOME PEOPLE THEY VIOLATE ANY CHANCE THEY GET?

12 A YES, THEY DO.

13 Q SOME PEOPLE NEVER VIOLATE?

14 A THAT'S CORRECT.

15 Q AND SOMETIMES THERE ARE PEOPLE IN THE MIDDLE?

16 A YES, I WOULD AGREE WITH THAT.

17 Q NOW, WITH MR. ANTONE, YOU DID NOT FIND ANYTHING THAT
18 SAID HE VIOLATED ANYONE SEXUALLY?

19 A THAT'S CORRECT.

20 Q HE INTERACTED WELL WHILE HE WAS AT THE BUREAU OF
21 PRISONS IN THE MARYLAND UNIT?

22 A YES.

23 Q YOU HEARD OF NO FIGHTS?

24 A NOT IN THE MARYLAND UNIT, NO.

25 Q NO DISAGREEMENTS?

1 A NO.

2 Q YOU ARE AWARE THAT WITH CHANGE, A PERSON HAS TO ASK
3 FOR HELP WHEN THEY NEED IT; IS THAT RIGHT?

4 A MANY TIMES, YES.

5 Q AND THE FACT THAT A PERSON ASKS FOR CHANGE IS A GOOD
6 THING?

7 A GENERALLY SPEAKING, I WOULD SAY SO, YES.

8 Q AND YOU NOTED IN YOUR UPDATED REPORT THAT ON
9 GOVERNMENT'S EXHIBIT NUMBER 9, WHICH IS YOUR PAGE 2, IT'S
10 DATED FOR SEPTEMBER 13, 2010?

11 MR. BREDENBERG: YOUR HONOR, I THINK THE
12 NUMBERING IS OFF AGAIN. IF HE IS TALKING ABOUT --

13 MR. ROSS: I AM SORRY. I AM LOOKING AT IT
14 BACKWARDS.

15 THE COURT: NUMBER 6.

16 MR. ROSS: THANK YOU, SIR.

17 Q NOW, YOU NOTATED THAT MR. ANTONE PARTICIPATED IN
18 BRIEF COUNSELING SESSIONS; IS THAT RIGHT?

19 A YES.

20 Q TO ADDRESS A VARIETY OF ISSUES?

21 A CORRECT.

22 Q DEATHS OF FAMILY MEMBERS, CONCERNS OF HIS SON, AND
23 DAY-TO-DAY STRESSORS ABOUT BEING DETAINED AND SYMPTOMS OF
24 ANXIETY; IS THAT RIGHT?

25 A THAT'S CORRECT.

1 Q NOW, IT'S A GOOD THING WHEN SOMEBODY ON THEIR OWN
2 ASKS FOR HELP; RIGHT?

3 A SURE.

4 Q HOW MANY NATIVE AMERICANS HAVE YOU TREATED WHILE YOU
5 HAVE BEEN AT BUTNER?

6 A I CAN'T GIVE YOU AN EXACT AMOUNT, BUT I CERTAINLY
7 HAVE HAD OCCASION TO PROVIDE COUNSELING AND CRISIS
8 INTERVENTION TO SOME NATIVE AMERICANS WHEN I HAVE BEEN ON
9 CALL DURING THOSE PERIODS OF TIME.

10 Q HOW MANY OF THE NATIVE AMERICANS HAVE VOLUNTEERED FOR
11 THE SEX TREATMENT PROGRAM?

12 A OFF THE TOP OF MY HEAD, I CAN THINK OF ONE. I CAN'T
13 RECALL IF ANY OTHERS HAVE DONE SO OVER THE LAST FOUR AND
14 HALF YEARS THOUGH.

15 Q HOW MANY OF THE 100 PLUS THAT HAVE BEEN PRETRIAL
16 DETAINEES WHILE AT BUTNER HAVE VOLUNTEERED FOR THE
17 TREATMENT PROGRAM?

18 A I DON'T KNOW EXACTLY, BUT I BELIEVE IT'S ANYWHERE
19 BETWEEN HALF A DOZEN AND EIGHT, SOMEWHERE IN THAT
20 NEIGHBORHOOD.

21 Q HOW MANY HAVE BEEN KICKED OUT OF THE PROGRAM SINCE
22 THEY VOLUNTEERED?

23 A I CAN RECALL ONE WHO WAS KICKED OUT OF THE PROGRAM,
24 BUT I DON'T RECALL IF ANYBODY ELSE HAS. SINCE I AM NOT
25 AFFILIATED, PER SE, WITH THE TREATMENT ASPECT, I DON'T

1 HAVE ACCESS TO THOSE NUMBERS OR DON'T KNOW OF ALL THE
2 INSTANCES.

3 Q HOW MANY HAVE DECIDED TO LEAVE THE PROGRAM ON THEIR
4 OWN?

5 A I DON'T KNOW IF ANYBODY HAS.

6 Q HOW MANY OF THOSE PEOPLE WHO VOLUNTEERED FOR THE
7 PROGRAM HAVE BEEN RELEASED FROM THE BUREAU OF PRISONS?

8 A NONE.

9 Q AND THAT IS IN THE FOUR YEARS?

10 A THAT IS IN THE FOUR YEARS, ALTHOUGH OF THOSE THAT
11 HAVE PARTICIPATED, I COULDN'T TELL YOU HOW LONG THEY WERE
12 IN TREATMENT FOR. SOME TREATMENT WITH SOME INDIVIDUALS
13 HAS BEEN OF SHORT OR MODERATE DURATION. I DON'T KNOW OF
14 ANYBODY THAT VOLUNTEERED FOR TREATMENT THAT HAS STAYED
15 WITH IT FOR AN EXTENDED PERIOD OF TIME.

16 Q YOU WOULD LIKE TO SEE PSYCHOLOGISTS TREAT MR. ANTONE
17 FOR HIS POLYSUBSTANCE ADDICTION; IS THAT RIGHT?

18 A YES, I THINK THAT IS VERY IMPORTANT FOR MR. ANTONE.

19 THE COURT: MR. ROSS, IF WE ARE ENTERING A NEW
20 AREA, WHY DON'T WE TAKE OUR MORNING BREAK AT THIS TIME.

21 MR. ROSS: YES, SIR.

22 THE COURT: WE'LL RECONVENE AT 10:45.

23 (WHEREUPON, A SHORT RECESS WAS TAKEN.)

24 THE COURT: MR. ROSS, YOU MAY CONTINUE.

25 MR. ROSS: THANK YOU, YOUR HONOR.

1 Q YOU TOOK TRAINING, EVALUATION OF SEXUALLY DANGEROUS
2 PERSONS, IN SEPTEMBER 2010; IS THAT RIGHT?

3 A THAT'S CORRECT.

4 Q AND THE PRESENTER THERE WAS AMY PHENIX WHO IS PRESENT
5 HERE IN THE COURTROOM?

6 A YES.

7 Q AND SHE WORKED ON THE STATIC-99, THE STATIC 99-R?

8 A YES.

9 Q ALL RIGHT. AND YOU HAVE ALSO BEEN TO TRAINING, USING
10 ASSESSMENT OF PSYCHOLOGICAL RISK FACTORS TO REVISE
11 RELATIVE RISK ASSESSMENTS DERIVED FROM STATIC -- THAT "A"
12 WORD -- ACTUARIAL INSTRUMENTS?

13 A I AM NOT SURE WHICH TRAINING YOU ARE REFERRING TO.

14 Q OCTOBER 2009 IN DALLAS, TEXAS?

15 A CAN YOU REMIND ME WHICH EXHIBIT THAT IS?

16 Q THAT IS EXHIBIT NUMBER 4.

17 A THANK YOU.

18 THE COURT: LOOKING AT GOVERNMENT'S EXHIBIT
19 NUMBER 4, DR. GUTIERREZ'S CV.

20 MR. ROSS: YES. SORRY.

21 Q UNDER RELEVANT TRAINING.

22 A YES. WHICH TRAINING WAS THAT AGAIN THAT YOU
23 MENTIONED?

24 Q IT'S THE FIFTH ONE DOWN.

25 THE COURT: WHAT PAGE? I GUESS THE PAGES

1 AREN'T NUMBERED.

2 MR. ROSS: IT IS THE THIRD PAGE -- THE FOURTH
3 PAGE OF THE CV.

4 THE WITNESS:

5 A YES.

6 Q AND DR. THORNTON, DR. HANSON, DR. HARKINS, DR.
7 WAKELING, AND THE ASSOCIATION FOR THE TREATMENT OF SEXUAL
8 ABUSERS. THIS WAS AT THAT CONFERENCE AND THEY PRESIDED?

9 A THAT'S CORRECT.

10 Q NOW, DO YOU BELONG TO THE ASSOCIATION FOR THE
11 TREATMENT OF SEXUAL ABUSERS?

12 A NO, I DON'T.

13 Q I SEE THAT YOU WENT TO ONE TRAINING IN OCTOBER 2009
14 WITH THEM. YOU WENT TO ANOTHER TRAINING BY DR. HARRIS
15 AND THE ASSOCIATION FOR THE TREATMENT OF SEXUAL ABUSERS
16 IN SEPTEMBER OF 2009; IS THAT RIGHT?

17 A CORRECT. THAT WAS PART OF THE ANNUAL CONFERENCE FOR
18 THE ASSOCIATION FOR THE TREATMENT OF SEXUAL ABUSERS AND
19 IT SPANNED THE LAST DAY OR TWO OF SEPTEMBER 2009 INTO
20 OCTOBER 2009.

21 Q ALL RIGHT. AND THE TRAININGS THAT YOU HAVE HAD, YOU
22 HAVE HAD THEM AT BUTNER; IS THAT RIGHT?

23 A SOME OF THEM, YES.

24 Q YOU HAVE HAD TRAININGS DEALING AT FCI-SPRINGFIELD?

25 A YES.

1 Q YOU EVEN HAD A TRAINING WITH DR. HEILBRUN IN JUNE OF
2 2009? THAT IS ON THE FIFTH PAGE OF YOUR CV.

3 A YES.

4 Q ALL RIGHT. NOW, OUT OF THE TRAINING SESSIONS THAT
5 YOU HAVE HAD WITH THE ASSOCIATION FOR THE TREATMENT OF
6 SEXUAL ABUSERS, THEY ACCEPT THAT HEBEPHILIA DIAGNOSIS OF
7 YOURS; DON'T THEY? THE HEBEPHILIA?

8 A I AM NOT SURE WHO ACCEPTS THAT.

9 Q DR. THORNTON, DR. HANSON, DR. HARKINS, DR. WAKELING?

10 A TO MY KNOWLEDGE, THEY DO.

11 Q AND OF COURSE THE ASSOCIATION FOR THE TREATMENT OF
12 SEXUAL ABUSERS?

13 A TO MY KNOWLEDGE.

14 Q ALL RIGHT. NOW, THIS IS ALSO THE SAME ORGANIZATION
15 AND THE SAME DOCTORS THAT ACCEPT PARAPHILIA NOS,
16 NON-CONSENT; IS THAT RIGHT?

17 A I WOULD SAY THAT AS A WHOLE THE ORGANIZATION ACCEPTS
18 THAT, YES.

19 Q IN OTHER WORDS, THERE ARE NO DISSENTING VOICES IN THE
20 ASSOCIATION FOR THE TREATMENT OF SEXUAL ABUSERS?

21 A NO, I WOULD DISAGREE WITH THAT. THERE ARE SOME
22 DISSENTING VOICES, SOME MEMBERS ATSA, THE ASSOCIATION FOR
23 THE TREATMENT OF SEXUAL ABUSERS. THERE ARE SOME MEMBERS
24 THAT TAKE THE POSITION AGAINST THESE DIAGNOSES.

25 Q I PRESUME THEY ARE MINORITY?

1 A I QUANTIFIED IT, BUT I BELIEVE SO.

2 Q NOW, YOU SAID THE BULK -- OR WHAT YOU USE AS A
3 REFERENCE IS THE DIAGNOSIS, THE DSM-IV; IS THAT WHAT YOU
4 USE?

5 A YES. THE DSM-IV-TR.

6 Q THIS IS A BOOK THAT TELLS YOU HOW TO PUT PEOPLE IN
7 CATEGORIES?

8 A ESSENTIALLY IT'S THE GUIDELINES THAT WE USE, MENTAL
9 HEALTH PROFESSIONALS, TO CONSIDER AND RENDER DIAGNOSES AS
10 THEY APPLY TO AN INDIVIDUAL.

11 Q AND WITH YOUR TRAINING, YOU HAVE KEPT UP ON THE
12 POSSIBILITY OF THERE BEING A DSM-V?

13 A YES, I AM AWARE OF THAT.

14 Q YOU ARE ALSO AWARE THAT THE DSM-V COMMITTEE HAS
15 CHOSEN NOT TO PUT PARAPHILIA NOS, NON-CONSENTING AS ONE
16 OF THE CATEGORIES? YOU ARE AWARE OF THAT; RIGHT?

17 A THAT IS MY UNDERSTANDING, YES.

18 Q NOW, WITH YOUR ASSUMPTIONS THAT YOU MADE, ONE OF THE
19 ASSUMPTIONS THAT YOU MADE WAS IN YOUR DIRECT TESTIMONY
20 WHICH IS THAT THERE WERE FOUR RAPES. THAT IS THE REASON
21 THAT YOU DECIDED THAT -- WAS ONE OF THE REASONS WHY YOU
22 DECIDED MY CLIENT HAS SERIOUS DIFFICULTY WITH SEXUAL
23 ISSUES OR ABNORMALITIES.

24 NOW, THAT WAS YOUR TESTIMONY THAT THERE WERE FOUR
25 RAPES?

1 A IF I DID TESTIFY TO THAT, I WOULD CORRECT THAT AND
2 SAY THAT THERE WERE FOUR VICTIMS WHOM HE HAD RAPED.
3 THERE WERE APPARENTLY MULTIPLE INSTANCES WITH MS.
4 MCCLOUD, SO IT WOULD STAND TO REASON THAT THERE WERE AT
5 LEAST FOUR RAPES, IF NOT MORE.

6 Q ASSUMING THAT WE ARE TALKING ABOUT TANYA MCCLOUD.

7 A YES.

8 Q ONE OF THE ASSUMPTIONS YOU MADE IS THAT THIS 1999
9 REPORT FROM DR. GRAY WAS ALL CORRECT?

10 A I HAD NO REASON TO THINK OTHERWISE.

11 Q YOU DID QUESTION THE FACT OF THE SCHIZOPHRENIC
12 EPISODES THAT THEY MENTION IN THEIR REPORT. YOU DID
13 QUESTION THAT; RIGHT?

14 A I DID QUESTION THAT. I DID NOTE THAT IN MY OPINION
15 THERE WAS NO EVIDENCE OF PSYCHOSIS FOR PERTAINING TO MR.
16 ANTONE IN THE TIME THAT I HAD EVALUATED HIM AND THERE
17 DIDN'T APPEAR TO BE ANY CORROBORATING EVIDENCE OF THAT IN
18 PRIOR MENTAL HEALTH RECORDS.

19 Q HOW LONG DID IT TAKE YOU TO TELL MR. ANTONE WHAT YOU
20 WERE THERE TO DO AS FAR AS YOUR PRE-CERTIFICATION
21 EVALUATION AND YOUR CERTIFICATION? SOMEWHERE ABOUT FIVE
22 MINUTES EACH TIME?

23 A I WOULD SAY MAYBE TEN MINUTES EACH TIME.

24 Q SO TWENTY MINUTES?

25 A A TOTAL OF TWENTY MINUTES, PERHAPS. IN THE FIRST TWO

1 REPORTS THAT I DID, AND THEN I HAD A FEW OCCASIONS TO
2 SPEAK WITH HIM SINCE THAT TIME, AND INCLUDING PRIOR TO
3 THE MOST RECENT REPORT.

4 Q DID YOU MENTION ANYTHING IN YOUR PRIOR REPORTS THAT
5 YOU HAD SPOKEN TO MR. ANTONE OVER THE LAST FOUR YEARS?

6 A IN MY UPDATE, I INDICATED THAT I SPOKE WITH HIM
7 AGAIN, THAT I WOULD BE DOING AN UPDATED REPORT TO THE
8 COURT, AND HE INDICATED THE FIRST TIME I MET WITH HIM IN
9 SEPTEMBER OF 2010, THAT HE WAS NOT CERTAIN ABOUT
10 PARTICIPATING IN AN EVALUATION. HE INDICATED HE WANTED
11 TO CONSULT WITH HIS ATTORNEY.

12 AND I MET WITH HIM A FEW DAYS LATER -- I BELIEVE HE
13 APPROACHED ME -- AND INDICATED THAT HE WOULD NOT BE
14 PARTICIPATING, SO I DID MENTION THAT, YES.

15 Q SO THAT TOOK ALL OF ANOTHER TEN MINUTES?

16 A APPROXIMATELY TEN MINUTES OR SO.

17 Q SO THE INTERACTION YOU HAD WITH MR. ANTONE WAS
18 APPROXIMATELY A HALF AN HOUR?

19 A PERHAPS ABOUT HALF AN HOUR OVER THE LAST FOUR AND
20 HALF, CLOSE TO FIVE YEARS.

21 Q NOW, I WAS TALKING ABOUT THE ASSUMPTIONS THAT YOU
22 MADE ABOUT THE RAPES, AND I AM TRYING TO FIND IT IN MY
23 NOTES.

24 FIRST OF ALL, ONE OF THE ASSUMPTIONS AND ONE OF THE
25 REASONS WHY YOU MADE IT HEBEPHILIA IS BECAUSE OF THE

1 FIRST ONE THAT IS ON THIS CHART, BYRON ANTONE CHRONOLOGY.
2 YOU SAID IT HAPPENED IN 1989. YOU ALSO CLARIFY -- FIRST
3 OF ALL, YOU SAID IT HAPPENED IN 1989; RIGHT?

4 A APPROXIMATELY 1989, YES.

5 Q YOU DON'T KNOW WHEN IT HAPPENED?

6 A NO, I DON'T KNOW.

7 Q YOU DON'T KNOW IF IT HAPPENED JANUARY, FEBRUARY, OR
8 ANY OF THE MONTHS; CORRECT? YOU DON'T KNOW WHICH MONTH
9 IT HAPPENED?

10 A I DO NOT KNOW WHICH MONTH IT HAPPENED.

11 Q ALL RIGHT. SO WHAT HAS BEEN MENTIONED IS THAT T.F.
12 WAS 13 AT THE TIME; IS THAT RIGHT?

13 A SHE WAS APPROXIMATELY 13 YEARS OLD, YES.

14 Q SINCE YOU DON'T KNOW WHETHER THIS HAPPENED AFTER MAY
15 26 OF 1989, YOU DON'T KNOW WHETHER MR. ANTONE, IF THIS
16 HAPPENED, WAS EITHER 16 OR 17 YEARS OLD; IS THAT RIGHT?

17 A HE COULD HAVE BEEN WITHIN THAT AGE RANGE, 16 TO 17.
18 PERHAPS 18. WELL, I GUESS NOT 18 IF IT'S 1989. HE WOULD
19 HAVE BEEN 17. SO AROUND THAT TIME, 16 OR 17 YEARS OLD.

20 Q SO ONE OF THE REASONS WHY YOU MADE THIS HEBEPHILIA
21 DIAGNOSIS, YOU SAID THAT IT HAS TO BE AT LEAST FIVE YEAR
22 AGE DIFFERENCE. SO ASSUMING IF HE IS AT THE 17 YEAR AGE,
23 YOU WOULD AGREE WITH ME THAT IS FOUR YEARS?

24 A THAT IS FOUR YEARS, BUT THE DSM INDICATES THAT IT'S A
25 GUIDELINE. IT DOESN'T HAVE TO BE ABSOLUTE WHEN APPLYING

1 DIAGNOSES. THE DIAGNOSES ARE MEANT TO BE GUIDELINES,
2 SO --

3 Q LET'S TALK ABOUT THAT OTHER GUIDELINE. IF HE IS 16
4 YEARS OLD, THAT WOULD MAKE IT AROUND THREE YEARS AGE
5 DIFFERENCE; RIGHT?

6 A IF YOU WOULD ASSUME THAT SHE WAS JUST 13 YEARS OLD AT
7 THAT TIME.

8 A RIGHT.

9 Q THAT WOULD BE THREE YEARS DIFFERENCE BETWEEN THE TWO?

10 A IF YOU USE THAT MATH, YES.

11 Q SO YOU WOULDN'T USE THAT AS ONE OF THE CRITERIA FOR
12 DECIDING WHETHER HE IS A HEBE -- IF HE SUFFERS FROM
13 HEBEPHILIA BECAUSE OF THE THREE YEAR AGE DIFFERENCE;
14 WOULD YOU?

15 A WELL, IT DEPENDS ON IF I DETERMINED WITH CERTAINTY
16 WHAT THE AGES WERE OF BOTH THE VICTIM AND MR. ANTONE AT
17 THE PRECISE TIME OF THE OFFENDING. THEN PERHAPS I MIGHT
18 NOT USE THAT IN TERMS OF ARRIVING AT THAT HEBEPHILIA
19 DIAGNOSIS.

20 Q BUT UNTIL YOU KNOW FOR CERTAIN IF MR. ANTONE WAS 16
21 OR IF MR. ANTONE IS 17, YOU WON'T CHANGE YOUR OPINION?

22 A I WILL NOT CHANGE MY OPINION, NO.

23 Q OKAY. NOW, LET'S SEE. LET'S TALK ABOUT THE OTHER
24 ONE THAT YOU SAID YOU DID NOT CONSIDER WHEN DIAGNOSING
25 HIM AS HEBEPHILIA, WHICH WAS V.R. NUMBER 1. YOU SAID THE

1 AGES WERE 16 AND 18, TWO YEAR AGE DIFFERENCE, IS THAT
2 RIGHT?

3 A THAT'S CORRECT.

4 Q AND YOU ALSO ARE AWARE BECAUSE YOU READ THE POLICE
5 REPORTS AND YOU READ THE INFORMATION ABOUT THAT INCIDENT
6 IN MR. ANTONE'S RECORD; RIGHT?

7 A THAT'S RIGHT.

8 Q AND YOU WERE AWARE THAT MR. ANTONE AND V.R. NUMBER 1
9 HAD A RELATIONSHIP FOR AT LEAST SIX MONTHS. WERE YOU
10 AWARE OF THAT?

11 A YES.

12 Q AND WERE YOU AWARE OR CAN YOU TELL THIS COURT IF V.R.
13 NUMBER 1'S BIRTHDAY WAS NEAR SEPTEMBER 26 OF THAT YEAR OR
14 WHEN V.R. NUMBER 1'S BIRTHDAY WAS?

15 A I DON'T KNOW WHEN HER BIRTHDAY WAS.

16 Q SO IF WE ASSUME THAT THEY HAD BEEN TOGETHER FOR SIX
17 MONTHS, THAT WOULD PUT US BACK ALL THE WAY TO MARCH OF
18 1990?

19 A THAT APPEARS SO.

20 Q SO THERE COULD HAVE BEEN AS CLOSE AS ONE YEAR
21 DIFFERENCE BETWEEN THE TWO, WHICH WOULD MAKE HER 16 AND
22 MAKE HIM 17?

23 A CORRECT.

24 Q AND IT COULD MAKE IT AS MUCH AS TWO YEARS APART;
25 RIGHT?

1 A IT APPEARS TO BE SOMEWHERE IN THAT WINDOW, YES.

2 Q AND WERE YOU AWARE THAT THE PARENTS PUSHED THIS
3 CHARGE ON MR. ANTONE? WERE YOU AWARE OF THAT?

4 A I AM AWARE OF THAT ACCOUNT FROM MR. ANTONE.

5 Q AND ARE YOU AWARE OF PARENTS -- STRIKE THAT. I AM
6 NOT GOING TO ASK THAT QUESTION.

7 SO, WE HAVE THAT ONE. SO, YOU CAN CONSIDER THAT
8 ONE. THAT IS EITHER TWO AGE DIFFERENCE BETWEEN TWO OR
9 ONE, T.F. WHICH WAS THE FIRST ONE FROM '89, YOU WON'T
10 CONSIDER UNLESS YOU HAVE SOME DEFINITE INFORMATION THAT
11 THERE IS A THREE AGE DIFFERENCE OR LESS WITH MR. ANTONE
12 AND T.F.; RIGHT?

13 I JUST WANT TO MAKE SURE I HAVE QUANTIFIED THOSE TWO
14 RIGHT, OR QUALIFIED THEM RIGHT?

15 A CORRECT. I THINK THAT THE INSTANCES OR INSTANCE WITH
16 T.F. STILL FALLS WITHIN THAT DESCRIPTION OF HEBEPHILIA,
17 AND AS I TESTIFIED EARLIER, I DID NOT CONSIDER THE RAPE
18 OF V.R. 1 WITH RESPECT TO THE HEBEPHILIA SPECIFIER. I
19 THOUGHT THAT THAT WAS ONLY APPLICABLE TO THE NON-CONSENT
20 SPECIFIER BECAUSE OF THAT PROXIMITY IN AGE BETWEEN MR.
21 ANTONE AND V.R. 1.

22 Q LET'S ASSUME THAT YOU KNOW THAT THERE IS A THREE AGE
23 DIFFERENCE BETWEEN T.F. AND ANTONE ON NUMBER 1, AND
24 ACCORDING TO YOUR DIRECT TESTIMONY, IT APPEARS THAT YOU
25 SHOULD NOT AND WOULD NOT CONSIDER THAT FOR THE HEBEPHILIA

1 DIAGNOSIS IF YOU KNEW FOR CERTAIN?

2 THE COURT: LET ME JUST CLARIFY, MR. ROSS.
3 WHEN YOU SAY THREE AGE DIFFERENCE, YOU MEAN THREE YEAR
4 DIFFERENCE?

5 MR. ROSS: YES. THANK YOU, SIR.

6 THE WITNESS:

7 A CAN YOU REPEAT THE QUESTION, PLEASE?

8 Q SURE. ASSUMING THAT YOU KNEW FOR CERTAIN THAT T.F.
9 AND MR. ANTONE, THERE WAS A THREE YEAR AGE DIFFERENCE
10 BETWEEN THE TWO, THAT WOULD NOT MEET YOUR CRITERIA FOR
11 DECIDING WHETHER HE IS A HEBEPHILIA; IS THAT RIGHT?

12 A THAT IS PROBABLY RIGHT. THAT PROBABLY WOULD NOT
13 FACTOR INTO A HEBEPHILIA DIAGNOSIS IF I KNEW FOR CERTAIN
14 THAT THERE WAS ONLY A THREE YEAR AGE DIFFERENCE BETWEEN
15 MR. ANTONE AND T.F.

16 Q SO FOR THE PURPOSES OF WHAT I AM ASKING, WE CAN CROSS
17 OFF T.F. AND WE CAN CROSS OFF V.R. NUMBER 1 ASSUMING THAT
18 THIS IS CORRECT.

19 LET'S GO TO R.A. THAT IS THE ONE FROM 1996. ALL
20 RIGHT. THAT IS ON THE SECOND CHART. DO YOU SEE IT?

21 A YES.

22 Q YOU ARE AWARE THAT MR. ANTONE WAS ACQUITTED FOR THAT
23 CHARGE. YOU ARE AWARE OF THAT; RIGHT?

24 A I AM NOT AWARE THAT HE WAS ACQUITTED. MY
25 UNDERSTANDING IS THAT THE CHARGES WERE DISMISSED AS PART

1 OF A PLEA AGREEMENT.

2 Q YOU ARE AWARE THAT HE WAS NOT CONVICTED OF THAT;
3 AREN'T YOU?

4 A I AM. I AM NOT AN ATTORNEY THOUGH, BUT I THINK THAT
5 THERE IS A DIFFERENCE BETWEEN ACQUITTAL AND DISMISSAL FOR
6 ATTORNEYS.

7 Q THERE IS.

8 A OKAY.

9 Q ARE YOU ASSUMING THAT IT HAPPENED?

10 A I AM TAKING IT -- I CONSIDERED THAT THOSE OFFENSES
11 AGAINST R.A. DID, IN FACT, HAPPEN.

12 Q ALL RIGHT. ASSUME THAT IT DIDN'T HAPPEN. ASSUME
13 THAT R.A. DIDN'T HAPPEN.

14 A ASSUME -- OKAY.

15 Q SO WE ARE ASSUMING T.F., IF THERE IS A THREE YEAR AGE
16 DIFFERENCE BETWEEN MY CLIENT AND MR. ANTONE (SIC), YOU
17 WOULD NOT CONSIDER THAT FOR HEBEPHILIA. V.R. NUMBER 1,
18 YOU DID NOT CONSIDER THAT BECAUSE YOU RULED THAT OUT.
19 AND THEN R.A. NUMBER 1 FROM 1996, ASSUME THAT IT DIDN'T
20 HAPPEN. THEN THAT WOULD LEAVE YOU WITH V.R. NUMBER 2; IS
21 THAT RIGHT?

22 A IF I MAKE ALL OF THOSE ASSUMPTIONS, YES, THEN I AM
23 ONLY LEFT WITH V.R. NUMBER 2.

24 Q AND THERE WOULD BE NO HEBEPHILIA DIAGNOSIS BECAUSE
25 YOU ONLY HAVE ONE. YOU DON'T HAVE SIX MONTHS RECURRING.

1 YOU DON'T HAVE ANY OF THAT?

2 A I WOULDN'T SAY THAT, ALTHOUGH I JUST HAVE THE ONE
3 INSTANCE OF HANDS ON OFFENDING THERE WITH OR CONTACT
4 OFFENSE WITH V.R. NUMBER 2, I WOULD ALSO CONSIDER THE
5 INFORMATION THAT WAS REPORTED IN THE 1999 PSYCHOLOGICAL
6 REPORT WHICH INDICATED THIS SEXUAL DEVIANCE TOWARDS
7 ADOLESCENTS OF THIS AGE RANGE, THOSE BEING THE MSI-II
8 FINDINGS, AND ALSO THE FINDINGS OF THE ABEL ASSESSMENT
9 WHICH CLEARLY INDICATED SEXUAL ATTRACTION TO MINORS
10 WITHIN THIS AGE RANGE.

11 SO IT WOULDN'T, IN MY MIND, IT WOULDN'T JUST BE THAT
12 ONE CONVICTION WITH V.R. 2.

13 Q THIS AGE RANGE WHERE THERE ARE STUDIES THAT MOST MEN
14 ARE ATTRACTED TO THAT AGE RANGE?

15 A CORRECT. AND AS I TESTIFIED EARLIER, MEN ARE
16 SOMETIMES SEXUALLY ATTRACTED TO INDIVIDUALS WITHIN THIS
17 AGE RANGE, HOWEVER THE DIFFERENCE BETWEEN SOMEBODY WITH
18 THIS PARAPHILIA AND YOUR AVERAGE MAN WOULD BE THE DEGREE
19 TO WHICH THAT PERSON WOULD HAVE RECURRING SEXUAL URGES,
20 FANTASIES OR BEHAVIORS INVOLVING THIS PARTICULAR AGE
21 GROUP.

22 Q SO REALLY MY QUESTION WAS ONLY THE FACT THAT OTHER
23 PEOPLE ARE ATTRACTED TO THIS AGE GROUP AND THAT WAS A YES
24 OR NO ANSWER; RIGHT?

25 A SOMETIMES THEY ARE.

1 Q DID YOU SPEAK WITH DR. GRAY?

2 A NO, I DID NOT.

3 Q DID YOU REVIEW THE POLYGRAPH EXAMINATION?

4 A NO, I DID NOT.

5 Q SO YOU HAVE NO WAY OF KNOWING IF THAT INFORMATION WAS
6 ACTUALLY CORRECT?

7 A I HAVE NO REASON TO BELIEVE OTHERWISE.

8 Q YOU HAVE NO IDEA IF THE INFORMATION IN WHICH THE
9 DOCTORS TRANSLATED AND MADE CONCLUSIONS ARE CORRECT?

10 A I HAVE NO REASON TO BELIEVE OTHERWISE.

11 Q DOES HEBEPHILIA APPEAR IN THE DSM-IV?

12 A THE TERM "HEBEPHILIA" IN AND OF ITSELF DOES NOT
13 APPEAR IN THE DSM-IV.

14 Q WHAT ABOUT THE DSM-5 POTENTIAL?

15 A THAT HAS YET TO BE DETERMINED.

16 Q DR. PHENIX DIDN'T FIND HEBEPHILIA; IS THAT RIGHT?

17 A THAT'S CORRECT.

18 Q DR. DAUM DIDN'T FIND HEBEPHILIA?

19 A THAT'S CORRECT.

20 Q YOU ALSO ASSUMED SOME THINGS ON FACTS ABOUT MR.

21 ANTONE. ONE OF THE THINGS YOU TESTIFIED TO WAS THAT MR.

22 ANTONE DIDN'T HAVE ANY GOOD FAMILY RELATIONSHIPS WHICH

23 INCLUDED HIS SISTER. HAVE YOU TALKED TO ANY OF HIS

24 FAMILY MEMBERS?

25 A I HAVE NOT. I THOUGHT I HAD TESTIFIED THAT I WASN'T

1 SURE ABOUT ALL OF HIS RELATIONSHIPS, BUT THE ONES THAT I
2 KNEW OF, CERTAINLY APPEARED TO BE --

3 Q WELL, YOU MADE A COMMENT ABOUT HIS SISTER SAYING IT
4 APPEARED THAT SHE HAD PROBLEMS, TOO?

5 A CORRECT.

6 Q DID YOU GET THAT FROM ANY DOCUMENTATION?

7 A I BELIEVE I HAD SEEN SOMETHING TO THAT EFFECT IN SOME
8 OF THE RECORDS REGARDING PRIOR ISSUES WITH SUBSTANCE
9 ABUSE.

10 MR. BREDENBERG: OBJECTION.

11 MR. ROSS:

12 Q CAN YOU TELL ME WHICH RECORDS --

13 MR. BREDENBERG: YOUR HONOR, WOULD HE PLEASE
14 ALLOW THE WITNESS TO FINISH.

15 THE COURT: PLEASE TAKE CARE OF THAT REGARD,
16 MR. ROSS.

17 MR. ROSS:

18 Q CAN YOU TELL ME WHICH RECORDS?

19 A I DON'T RECALL OFF THE TOP OF MY HEAD.

20 Q IN YOUR 30 MINUTES OF SPEAKING WITH MR. ANTONE OVER
21 THE LAST FOUR AND HALF YEARS, DID YOU FIND HIM TO BE
22 DECEPTIVE IN ANY FORM OR FASHION?

23 A NO, I DID NOT.

24 Q IN YOUR 30 MINUTES OF SPEAKING WITH MR. ANTONE OVER
25 THE LAST FOUR AND HALF YEARS, DID YOU FIND OUT IF HE HAD

1 BEEN DRINKING ALCOHOL OR HE SMELLED OF ALCOHOL WHILE HE
2 WAS IN YOUR PRESENCE?

3 A NO.

4 Q IN YOUR 30 MINUTES OF SPEAKING WITH MR. ANTONE, DID
5 YOU FIND OUT IF HE HAD BEEN SEXUALLY VIOLENT TO ANYONE OR
6 ACTED OUT WHILE HE WAS AT THE PRISON?

7 A NO.

8 Q YOU ARE AWARE, BECAUSE YOU HAVE READ THE RECORD, THAT
9 HE HAS SEVERAL RESTRICTIONS ON HIM IF HE IS ALLOWED TO
10 LEAVE THE BUREAU OF PRISONS. YOU ARE AWARE OF THAT?

11 A YES.

12 Q AND YOU HEARD THE TESTIMONY YESTERDAY IN REFERENCE TO
13 HIM BEING PLACED IN A HALFWAY HOUSE IN ARIZONA?

14 A THAT'S CORRECT.

15 Q AND ONE OF THE CONDITIONS IS IT'S NOT "MAY", THAT HE
16 "SHALL" PARTICIPATE IN DRUG OR ALCOHOL REHABILITATION IF
17 PROBATION TELLS HIM HE IS SUPPOSED TO?

18 A THAT'S CORRECT.

19 Q ALSO, IT'S NOT "MAY", BUT "SHALL" -- HE SHOULD AND
20 WOULD DO SEXUAL TREATMENT IF HE IS TOLD BY THE PROBATION
21 OFFICE, IS THAT RIGHT?

22 A THAT'S CORRECT.

23 Q YOU WOULD AGREE WITH ME PEOPLE CAN GET TREATMENT FOR
24 DRUG AND ALCOHOL, AND IT DOES NOT HAVE TO BE BEHIND THE
25 GATE?

1 A I WOULD AGREE THAT THAT IS POSSIBLE FOR SOME
2 INDIVIDUALS, YES.

3 Q YOU WOULD AGREE WITH ME THAT PEOPLE CAN GET TREATMENT
4 FOR SEXUAL ISSUES FROM OUTSIDE OF THE GATE?

5 A SOME PEOPLE CAN, YES.

6 Q YOU WOULD AGREE WITH ME THAT IN THE LAST 14 YEARS,
7 YOU HAVE NO EVIDENCE -- THERE IS NOTHING IN THE RECORD,
8 NOTHING IN THE CONVERSATIONS OVER THE LAST 30 MINUTES
9 THAT YOU HAD WITH MY CLIENT, THAT HE HAS ACTED OUT IN ANY
10 FORM OR FASHION, AND THAT HE WAS SEXUALLY DANGEROUS TO
11 ANYONE WHILE HE WAS IN THE BUREAU OF PRISONS?

12 DO YOU HAVE THAT INFORMATION?

13 A NO, THERE IS NO INFORMATION TO THAT EFFECT.

14 Q HE WENT INTO THE PRISON SYSTEM AFTER THE FULL
15 DEVELOPMENT OF HIS BRAIN; IS THAT RIGHT?

16 A IT WOULD APPEAR SO, YES.

17 Q CHANGE COMES FROM PEOPLE MATURING; RIGHT?

18 A IT CAN.

19 Q MR. ANTONE MAY HAVE MATURED IN THE LAST 14 YEARS?

20 A CERTAINLY.

21 Q HE HAS OBVIOUSLY GOTTEN OLDER IN THE LAST 14 YEARS;
22 IS THAT RIGHT?

23 A YES, HE HAS.

24 Q LET'S TALK ABOUT ANOTHER ASSUMPTION THAT YOU MADE AND
25 THAT DR. GRAY HAD IN HIS REPORT WHICH WAS THAT MS.

1 MCCLOUD WAS SEXUALLY ASSAULTED BY MR. ANTONE WHICH IS ON
2 THAT CHART?

3 A THAT'S CORRECT.

4 Q YOU WERE IN THE COURTROOM WHEN WE READ ALOUD MS.
5 MCCLOUD'S AFFIDAVIT. YOU WERE IN THE COURTROOM; RIGHT?

6 A I WAS IN THE COURTROOM. I DON'T RECALL IF IT WAS
7 READ ALLOWED.

8 MR. ROSS: YOUR HONOR, IF I MAY HAVE A MOMENT.
9 I AM GOING TO GET EXHIBIT NUMBER 7.

10 THE COURT: YOU MAY, SIR. AND THAT IS
11 RESPONDENT'S NUMBER 7?

12 MR. ROSS: YES, I BELIEVE THAT IS THE NUMBER.

13 MR. BREDENBERG: WE OBJECT TO THIS, YOUR
14 HONOR, AS WE PRESENTED IT ON THE RECORD YESTERDAY.

15 MR. ROSS: RESPONDENT'S 16.

16 THE COURT: RESPONDENT'S 16. THAT IS THE
17 AFFIDAVIT OF MS. MCCLOUD. I WILL ALLOW COUNSEL TO READ
18 FROM THAT TO THE WITNESS FOR THE PURPOSE OF ELICITING AN
19 OPINION FROM THE WITNESS.

20 MR. ROSS: THANK YOU.

21 Q LET'S GO OVER THIS RESPONDENT'S EXHIBIT NUMBER 16.
22 DO YOU HAVE IT IN FRONT OF YOU?

23 A YES, I DO.

24 Q ALL RIGHT. IT'S UNITED STATES VERSUS BYRON NEIL
25 ANTON, AND IT SAYS AFFIDAVIT OF TANYA MCCLOUD, AND IT

1 READS THE FOLLOWING: I, TANYA MCCLOUD, BEING FIRST DULY
2 SWORN, HEREBY STATE THE FOLLOWING:

3 NUMBER 1. MY NAME IS TANYA MCCLOUD. MY BIRTHDAY
4 IS, AND IT'S BLANK, 1974, AND MY SOCIAL SECURITY IS
5 (BLANK).

6 NUMBER 2. I MET BYRON NEIL ANTONE WHEN I WAS 20
7 YEARS AND HE WAS 22 YEARS OLD, APPROXIMATELY 1994.

8 NUMBER 3. MR. ANTONE AND I DRANK ALCOHOL TO EXCESS
9 AND ABUSED DRUGS, MARIJUANA AND COCAINE, ON A REGULAR
10 BASIS.

11 NUMBER 4. MY RELATIONSHIP WITH MR. ANTONE CONSISTS
12 OF ABUSE ON BOTH OF OUR PARTS, PRIMARILY WHEN WE WERE
13 DRINKING AND ABUSING DRUGS.

14 NUMBER 5. MR. ANTONE AND I HAD A NORMAL SEX LIFE.
15 I WOULD WITHHOLD SEX DURING THE TIME WHEN WE FOUGHT AND
16 WOULD TEMPORARILY MOVE IN WITH MY MOTHER.

17 NUMBER 6. I WAS SURPRISED WHEN MR. ANTONE WAS
18 ARRESTED FEBRUARY 28, 1998, BECAUSE HE -- I CANNOT
19 IMAGINE THAT HE WOULD EVER BE SEXUALLY AGGRESSIVE TOWARDS
20 WOMEN. I WAS NEVER A VICTIM OF SEXUAL ABUSE.

21 NUMBER 7. MR. ANTONE AND I HAVE A 14 YEAR OLD SON
22 TOGETHER, PERNELL, WHO WAS BORN IN 1997. MR. ANTONE HAS
23 ALWAYS BEEN A GOOD FATHER TO OUR SON.

24 NUMBER 8. I HAVE AN 18 YEAR OLD DAUGHTER. MR.
25 ANTONE HAS ALWAYS -- WAS ALWAYS A GOOD FATHER TO MY

1 DAUGHTER.

2 NUMBER 9. I HAVE CONTACTED -- I HAVE BEEN IN
3 CONTACT WITH MR. ANTONE BECAUSE I STILL CARE ABOUT HIM.

4 UNDERNEATH THAT IT IS SIGNED TANYA MCCLOUD, DATED
5 SEPTEMBER 13, 2011.

6 AND IT IS SWORN BEFORE A NOTARY IN ARIZONA, IN THE
7 STATE OF ARIZONA.

8 ASSUMING THAT YOU ASSUME MR. - DR. GRAYS REPORT HAS
9 TO BE RIGHT, THAT SHE WAS SEXUALLY ASSAULTED BY MY
10 CLIENT, THEN I AM ASSUMING THAT YOU ASSUME TANYA MCCLOUD
11 IS LYING IN HER AFFIDAVIT?

12 A I WOULD SAY THAT I PLACE GREATER EMPHASIS OR GREATER
13 WEIGHT ON THE ADMISSION THAT MR. ANTONE MADE IN 1999 TO
14 DR. GRAY AND SADLER.

15 Q BECAUSE THEY ARE DOCTORS?

16 A WELL, BECAUSE THEY ARE DOCTORS, BECAUSE THEY ARE
17 OBJECTIVE IN TERMS OF HOW THEY ARE REPORTING THE FACTS.
18 WHEN FAMILY MEMBERS, FRIENDS, MAKE STATEMENTS ON BEHALF
19 OF A DEFENDANT OR A RESPONDENT, SOMETIMES YOU HAVE TO
20 TAKE THOSE WITH A GRAIN OF SALT BECAUSE THEY MIGHT HAVE A
21 TENDENCY TO SUGARCOAT THINGS A BIT, SO I THINK IT'S
22 IMPORTANT TO TAKE IT IN THE CONTEXT OF THE BIG PICTURE.

23 Q WHAT YOU SAID WAS AN INTERESTING WORD, OBJECTIVE.

24 YOUR JOB IS TO BE OBJECTIVE; RIGHT?

25 A THAT'S CORRECT.

1 Q SO WHEN YOU LOOK AT A SITUATION, YOU ARE SUPPOSED TO
2 STATE WHAT YOU SEE AND WHAT YOU HEAR; IS THAT RIGHT?

3 A THAT'S CORRECT.

4 Q AND NOT MAKE A CONCLUSION ONE WAY OR THE OTHER OR BE
5 JUDGMENTAL ABOUT THAT?

6 A WELL, ULTIMATELY I HAVE TO MAKE CONCLUSIONS ABOUT THE
7 INFORMATION THAT I REVIEW. BUT IT'S DONE IN AN OBJECTIVE
8 WAY.

9 Q SO OBJECTIVELY, MATURING IS A GOOD THING?

10 A GENERALLY SPEAKING, YES, BUT INDIVIDUALS CAN MATURE
11 INTO -- THEY MIGHT DEVELOP NEGATIVE ASPECTS TO THEIR
12 PERSONALITY OR TO THE BEHAVIOR, SO I WOULDN'T SAY THAT
13 IT'S ALWAYS A GOOD THING, BUT GENERALLY SPEAKING, SURE.

14 Q GENERALLY SPEAKING. BUT SPECIFICALLY, WHEN WE TALK
15 ABOUT MR. ANTONE MATURING AND NOT DOING THE SAME THINGS
16 HE DID WHEN HE WAS 25 YEARS OLD IS A GOOD THING,
17 OBJECTIVELY?

18 A OBJECTIVELY, YES. IT'S COMMENDABLE THAT HE HAS BEEN
19 ABLE TO MAINTAIN CLEAR CONDUCT SINCE HE WAS INCARCERATED,
20 BUT I WOULD EMPHASIZE THAT HAS BEEN WHILE HE HAS BEEN
21 INCARCERATED. IT'S A DIFFERENT SET OF ENVIRONMENTAL
22 CIRCUMSTANCES THAT PERTAIN TO HIM WHEN HE IS IN PRISON AS
23 OPPOSED TO WHEN HE IS OUT IN THE COMMUNITY.

24 Q OBJECTIVELY, YOU KNOW WITH THOSE CIRCUMSTANCES OF
25 BEING IN A PRISON SYSTEM, SOME PEOPLE ACT OUT

1 OBJECTIVELY?

2 A YES, THEY DO.

3 Q NOW, YOUR CONCERN HE DID NOT PARTICIPATE IN SOTP
4 PROGRAM; THAT IS YOUR CONCERN?

5 A IT'S A CONCERN THAT HE HAS NOT HAD ANY SEX OFFENDER
6 TREATMENT IN HIS LIFE, NOT JUST PARTICIPATION IN THE
7 TREATMENT AT BUTNER.

8 Q NOW, YOU LOOKED AT THE STATIC-99R AND YOU CAME UP
9 WITH THE NUMBER 6?

10 A YES, I DID.

11 Q NOW THERE ARE PERCENTAGES ASSOCIATED WITH THAT NUMBER
12 6, WITH THE STATIC-99R?

13 A YES.

14 Q ARE ANY OF THOSE FOR LIKE, LET'S ASSUME WE ARE
15 TALKING ABOUT WITHIN FIVE YEARS OF RECIDIVISM. CAN YOU
16 TELL ME WHAT YOUR FIGURE WAS FOR THAT?

17 A TO REFRESH MY MEMORY HERE, FOR A SCORE OF 6 ON THE
18 STATIC-99R, I LISTED A RECIDIVISM RATE OF 31.2 PERCENT,
19 FIVE YEARS.

20 Q DO YOU KNOW IF MR. ANTONE IS IN THAT GROUP THAT WILL
21 RECIDIVATE WITHIN FIVE YEARS?

22 A NO, I DO NOT.

23 Q SO WITH THAT, YOU DON'T KNOW WHETHER MR. ANTONE IS IN
24 A GROUP THAT WON'T RECIDIVATE WITHIN FIVE YEARS?

25 A I DON'T KNOW SPECIFICALLY IF HE WILL OR WILL NOT

1 RECIDIVATE.

2 Q THAT NUMBER IN FIVE YEARS IS LESS THAN 50 PERCENT;
3 ISN'T IT?

4 A YES, IT IS.

5 Q IT'S NOT MORE LIKELY THAN NOT?

6 A IT'S LESS THAN 50 PERCENT, NOT MORE LIKELY THAN NOT.

7 Q LET'S GO WITH THE TEN YEAR RANGE. WHAT IS THE
8 PERCENT FOR THAT ONE?

9 A 41.9 PERCENT IN TEN YEARS.

10 Q YOU DON'T KNOW WHETHER MR. ANTONE IN THAT 41 PERCENT
11 THAT WILL -- SUPPOSED TO RECIDIVATE?

12 A NO, I DON'T KNOW IF HE SPECIFICALLY IS.

13 Q AND, OF COURSE, YOU DON'T KNOW WHETHER HE IS IN THE
14 59 OR 58-POINT-SOMETHING PERCENT THAT WON'T RECIDIVATE?

15 A NO, I DO NOT.

16 THE COURT: DR. GUTIERREZ, ARE YOU LOOKING AT
17 A PARTICULAR PAGE OF YOUR REPORT?

18 THE WITNESS: YES, YOUR HONOR. I AM LOOKING
19 AT PAGE 3 OF THE FORENSIC EVALUATION UPDATE, GOVERNMENT'S
20 EXHIBIT 6. IT'S THE MIDDLE PARAGRAPH ON THAT PAGE.

21 THE COURT: I SEE. I BELIEVE THAT IS BATES
22 STAMP 1919.

23 THE WITNESS: RIGHT.

24 THE COURT: VERY GOOD. THANK YOU.

25 MR. ROSS:

1 Q ACTUALLY, THE NUMBER THAT IS OVER 50 PERCENT IS THE
2 RATE OF THE PEOPLE WHO WON'T RECIDIVATE IN TEN YEARS?

3 A WELL, IT'S THE RATE OF INDIVIDUALS THAT WILL NOT BE
4 DETECTED OF HAVING REOFFENDED WITHIN TEN YEARS. BECAUSE
5 THE RATES ARE ONLY APPLICABLE TO INDIVIDUALS THAT ARE
6 CAUGHT OR DETECTED FOR HAVING REOFFENDED. THERE ARE
7 OSTENSIBLY GOING TO BE SOME THAT REOFFEND THAT AREN'T
8 CAUGHT OR IDENTIFIED FOR THESE RESEARCH CENTERS.

9 Q SINCE YOU WENT THERE, HOW MANY OF THE 58 PERCENT DO
10 YOU KNOW WERE NOT CAUGHT OF DOING ANYTHING?

11 A I DON'T KNOW THAT.

12 MR. ROSS: NOTHING FURTHER.

13 THE COURT: MR. BREDENBERG.

14 MR. BREDENBERG: THANK YOU, YOUR HONOR.

15 REDIRECT EXAMINATION BY MR. BREDENBERG:

16 Q DR. GUTIERREZ, MR. ROSS ASKED YOU ABOUT SEX OFFENDER
17 TREATMENT AND WHAT YOU KNEW ABOUT THE PEOPLE THAT HAD
18 BEEN IN IT OR KICKED OUT OR VOLUNTEERED FOR IT.

19 ARE YOU AWARE OF ANYBODY THAT HAS ACTUALLY COMPLETED
20 THE TREATMENT AND BEEN RELEASED FROM BUTNER?

21 A YES. I AM AWARE OF AN INDIVIDUAL WHO WAS COMMITTED
22 UNDER 4248 IN THE DISTRICT OF MASSACHUSETTS. HE
23 PARTICIPATED IN TREATMENT FOR APPROXIMATELY TWO YEARS AND
24 HAS SUBSEQUENTLY BEEN RELEASED TO THE COMMUNITY.

25 THERE IS ANOTHER INDIVIDUAL ALSO FROM THE DISTRICT OF

1 MASSACHUSETTS WHO IS NEARING COMPLETION AND IT'S
2 ANTICIPATED THAT HE WILL BE RELEASED TO THE COMMUNITY IN
3 THE NEAR FUTURE.

4 Q MR. ROSS MADE A SIGNIFICANT POINT ABOUT THE 30
5 MINUTES THAT YOU SPENT WITH MR. ANTONE. WHY SO LITTLE
6 TIME?

7 A BECAUSE THE TIMES THAT I HAD MET WITH HIM, HE
8 DECLINED TO PARTICIPATE IN A CLINICAL INTERVIEW. IF HE
9 HAD DONE SO, IT CERTAINLY WOULD HAVE BEEN MORE TIME THAN
10 THAT.

11 Q HE SPECIFICALLY SAID HE DIDN'T WANT TO TALK TO YOU?

12 A ON THE OCCASIONS THAT I MET WITH HIM, YES.

13 Q WHY WOULD YOU NOT TRY TO FORCE HIM TO TALK TO YOU
14 MORE?

15 A HE ESSENTIALLY WAS CERTAIN OF HIS DECISION OR
16 INDICATION THAT HE WAS NOT GOING TO PARTICIPATE. ON AT
17 LEAST TWO OCCASIONS HE INDICATED THAT HE WOULD NOT DO SO
18 AT THE ADVICE OF COUNSEL. AND IT'S JUST MY CLINICAL
19 PRACTICE THAT IF AN INDIVIDUAL REFUSES TO PARTICIPATE, TO
20 ACCEPT THAT AND TO CONDUCT THE EVALUATION AS BEST I CAN
21 EVEN WITHOUT THAT INTERVIEW.

22 Q BUT DO YOU HAVE ANY ETHICAL CONCERNS IF YOU DIDN'T
23 HAVE THAT PRACTICE?

24 A I WOULD HAVE ETHICAL CONCERNS IF I ATTEMPTED TO
25 COERCE OR BADGER AN INDIVIDUAL INTO AN INTERVIEW OR

1 PARTICIPATION IN AN EVALUATION.

2 Q MR. ROSS ALSO TALKED TO YOU ABOUT A HYPOTHETICAL
3 SITUATION WITH REGARD TO YOUR HEBEPHILIA DIAGNOSIS OR
4 YOUR HEBEPHILIA SPECIFIER, AND HE SUGGESTED A
5 HYPOTHETICAL AND ASSUMED OR ASKED YOU TO ASSUME THAT YOU
6 KNOW FOR SURE THAT THESE THINGS DIDN'T HAPPEN.

7 DO YOU KNOW FOR SURE THE FACTS THAT MR. ROSS
8 PRESENTED IN THE HYPOTHETICAL?

9 A CAN YOU REPHRASE YOUR QUESTION, PLEASE?

10 Q SURE. HE PROVIDED YOU A HYPOTHETICAL AND SAID
11 ASSUMING YOU KNOW FOR SURE THAT THIS STUFF HAPPENED OR
12 DIDN'T HAPPEN, AND THEN HE GAVE YOU THE HYPOTHETICAL AND
13 ASKED YOUR OPINION ON IT.

14 DID YOU KNOW FOR SURE WHETHER THESE THINGS HAPPENED
15 OR NOT?

16 A I KNEW TO A REASONABLE DEGREE OF PROFESSIONAL
17 CERTAINTY THAT THESE INSTANCES OCCURRED BASED ON THE
18 RECORDS THAT I REVIEWED, THE POLICE RECORDS, THE
19 PRESENTENCE INVESTIGATION REPORT. THE TOTALITY OF THE
20 INFORMATION THAT I REVIEWED INDICATED TO ME THAT THESE
21 OFFENSES HAD OCCURRED.

22 Q MR. ROSS READ TO YOU AND YOU READ ALONG RESPONDENT'S
23 EXHIBIT 16 WHICH WAS THE TANYA MCCLOUD AFFIDAVIT.

24 A CORRECT.

25 Q DO YOU KNOW WHERE THAT AFFIDAVIT CAME FROM?

1 A I DO NOT KNOW IF IT'S LISTED HERE, BUT I WOULD ASSUME
2 IT WAS COMPLETED BY MS. MCCLOUD WHILE SHE WAS
3 INCARCERATED AT A FEDERAL FACILITY IN ARIZONA.

4 Q DO YOU KNOW FOR SURE THAT SHE DID THAT?

5 A I DO NOT KNOW FOR CERTAIN, BUT I DO KNOW THAT SHE HAS
6 BEEN IN CUSTODY FOR A PERIOD OF TIME AND CONSIDERING THAT
7 THIS AFFIDAVIT WAS TAKEN LAST MONTH, I THINK IT'S A
8 REASONABLE ASSUMPTION THAT SHE WAS FEDERALLY INCARCERATED
9 AT THE TIME THAT SHE COMPLETED THIS AFFIDAVIT.

10 Q DO YOU KNOW THE CIRCUMSTANCES UNDER WHICH IT WAS
11 OBTAINED?

12 A NO, I DO NOT.

13 Q DO YOU KNOW WHO WROTE IT?

14 A NO, I DO NOT.

15 Q DO YOU KNOW WHETHER IT'S ACCURATE?

16 MR. ROSS: OBJECTION. LEADING.

17 THE COURT: OVERRULED.

18 MR. BREDENBERG:

19 Q DO YOU KNOW WHETHER IT'S ACCURATE?

20 A NO, I DO NOT KNOW WHETHER IT'S ACCURATE.

21 Q EVEN CONSIDERING THAT IT WAS ACCURATE AND IT
22 WAS TRUE, WOULD THAT AFFECT YOUR OPINION?

23 A NO, IT WOULD NOT.

24 Q IS IT REASONABLE TO THINK THAT MS. MCCLOUD, WHO IS
25 MR. ANTONE'S FORMER GIRLFRIEND, WOULD NOT KNOW OF ALL OF

1 THE ALLEGATIONS OF SEXUAL ASSAULT, ALL OF THE ARRESTS AND
2 ALL OF THE CONVICTIONS?

3 MR. ROSS: OBJECTION. SPECULATION.

4 THE COURT: OVERRULED. YOU MAY ANSWER, SIR.

5 THE WITNESS:

6 A I WOULD THINK THAT MS. MCCLOUD WOULD KNOW OF AT LEAST
7 SOME OF THESE ALLEGATIONS AND CONVICTIONS, PERHAPS IT'S
8 POSSIBLE THAT SHE DOES NOT KNOW OF ALL OF THESE
9 INSTANCES.

10 Q MR. ROSS ASKED YOU ABOUT THE SUPERVISED RELEASE
11 CONDITIONS AS HE DID WITH DR. PHENIX YESTERDAY, AND
12 TALKED A LITTLE BIT ABOUT THE REQUIREMENTS THAT MR.
13 ANTONE WOULD HAVE IF RELEASED.

14 I WILL ASK THE SAME QUESTION THAT MR. ROYSTER ASKED
15 DR. PHENIX. IS THIS A SUFFICIENT RISK REDUCTION PLAN, IN
16 YOUR MIND?

17 A NO, IT'S NOT.

18 Q WHY NOT?

19 A WELL, A RELAPSE PREVENTION PLAN THAT AN INDIVIDUAL
20 WORKS ON AND DEVELOPS DURING THE COURSE OF SEX OFFENDER
21 TREATMENT IS AN EXTENSIVE PREPARATION. IT'S AN EXTENSIVE
22 EXERCISE IN WHICH THE INDIVIDUAL WILL IDENTIFY WHAT THE
23 TRIGGERS ARE FOR SEXUAL OFFENDING OR WHATEVER TYPE OF
24 OFFENDING IS GERMANE TO THE CASE, BUT IN THIS CASE,
25 SEXUAL OFFENDING. SO THE INDIVIDUAL WILL IDENTIFY WHAT

1 THOSE TRIGGERS ARE, WHAT THOSE STRESSORS ARE, WHAT NEEDS
2 TO BE DONE IN ORDER TO AVOID CERTAIN SITUATIONS.

3 IF A SITUATION PRESENTS ITSELF, IF FOR INSTANCE "A"
4 HAPPENS, WHAT DO I DO SO THAT I DON'T GET ALL THE WAY TO
5 "B" AND "C" AND "D" WHICH WOULD LEAD TO POSSIBLY
6 OFFENDING. SO IT'S SOMETHING THAT AN INDIVIDUAL WORKS ON
7 IN TREATMENT WITH TREATMENT PROVIDERS SO THAT IT'S A
8 SOUND STRATEGY AND PLAN FOR AVOIDING FUTURE REOFFENSE.

9 CONDITIONS THAT ARE PART OF SUPERVISED RELEASE KIND
10 OF PROVIDE SOME STRUCTURE FOR THAT PERSON OUT IN THE
11 COMMUNITY, BUT THEY AREN'T A RELAPSE PREVENTION PLAN, SO
12 TO SPEAK.

13 AND WE HEARD MR. ANTONE TALK ABOUT THAT A LITTLE BIT
14 YESTERDAY, AND HE MENTIONED ABOUT HAVING SOMEBODY TO TALK
15 TO OR SOMEBODY TO CONFIDE IN, AND THAT WOULD BE NICE TO
16 HAVE THAT, BUT THAT ISN'T A SUBSTITUTE FOR HAVING AN
17 ACTUAL RELAPSE PREVENTION PLAN, HAVING A PHONE NUMBER OR
18 SOMEBODY TO CALL IF YOU WERE TO GET INTO TROUBLE BECAUSE
19 YOU NEED TO HAVE THE STEPS IN PLACE, THE TOOLS IN PLACE,
20 THE SKILLS, THAT YOU OBTAIN THROUGH TREATMENT AND DEVELOP
21 IN THAT RELAPSE PREVENTION PLAN.

22 Q IS IT YOUR OPINION THAT THAT TREATMENT NEEDS TO BE
23 DONE IN AN IN-PATIENT OR IN A STRUCTURED SETTING?

24 A YES, IT IS MY OPINION THAT THAT IS NECESSARY.

25 MR. BREDEBERG: NO FURTHER QUESTIONS, YOUR

1 HONOR.

2 THE COURT: MR. ROSS.

3 MR. ROSS: YES.

4 RECROSS EXAMINATION BY MR. ROSS:

5 Q THERE COULD BE A STRUCTURED PROGRAM FOR DRUG
6 TREATMENT, THAT IS NOT BEHIND THE BARS OF A PRISON?

7 A THAT IS POSSIBLE.

8 Q IT'S ALSO POSSIBLE THAT THERE IS A STRUCTURED PROGRAM
9 IN TUCSON, ARIZONA FOR SEXUAL TREATMENT THAT WOULD FIT
10 THE CRITERIA THAT YOU ARE LOOKING FOR AND HELP MR. ANTONE
11 DEVELOP A RELAPSE PLAN; ISN'T THAT POSSIBLE?

12 A THAT IS POSSIBLY. I DON'T KNOW IF THERE IS, BUT I
13 SUPPOSE THAT IS POSSIBLE.

14 Q NOW, THE GOVERNMENT, THROUGH MR. BREDENBERG, ASKED
15 YOU QUESTIONS ABOUT THIS AFFIDAVIT. YOU NEVER SPOKE TO
16 MS. MCCLOUD; RIGHT?

17 A THAT'S CORRECT.

18 Q YOU NEVER SPOKE TO T.F.

19 A THAT'S CORRECT.

20 Q YOU NEVER SPOKE TO V.R. NUMBER 1?

21 A THAT'S CORRECT.

22 Q V.R. NUMBER 2?

23 A THAT'S CORRECT.

24 Q R.J.? R.A.? EXCUSE ME.

25 A THAT'S CORRECT.

1 Q YOU NEVER SPOKE TO ANY OF THOSE FOLKS OVER THERE?

2 A NO, I NEVER DID. IT REALLY ISN'T MY PRACTICE TO DO
3 SO, TO SPEAK TO VICTIMS OF PRIOR OFFENSES, PARTICULARLY
4 SEX OFFENSES. THERE ARE ETHICAL CONCERNS ABOUT DOING SO.
5 PRIMARILY, THE RISK THAT ONE COULD TAKE IN TERMS OF
6 RESUBJECTING AN INDIVIDUAL TO FURTHER PSYCHOLOGICAL
7 TRAUMA, SO THAT WOULDN'T BE SOMETHING THAT I WOULD
8 IMPLEMENT AS PART OF MY EVALUATION.

9 Q SO ACTUALLY THE ONLY THING THAT YOU HAVE BEEN ABLE TO
10 SEE FROM A SO CALLED VICTIM THAT WAS SIGNED IS THIS
11 AFFIDAVIT FROM TANYA MCCLOUD. THAT IS AS CLOSE TO
12 ANYTHING WRITTEN, SPOKEN ABOUT SINCE THE INCIDENT?

13 A NO. I WOULD SAY THAT IS INACCURATE. I WAS ABLE TO
14 REVIEW POLICE REPORTS AND THINGS OF THAT NATURE THAT WENT
15 INTO THE INVESTIGATION AND FAIRLY CERTAIN THAT THERE WERE
16 SOME WRITTEN STATEMENTS OR AT LEAST VERBAL STATEMENTS
17 FROM THE VICTIMS PERTAINING TO THE OFFENSES THAT MR.
18 ANTONE COMMITTED.

19 Q LET ME SEE. DO YOU HAVE ANYTHING FROM 2011 FROM ANY
20 OF THESE PEOPLE?

21 A NO, I DO NOT.

22 Q 2010?

23 A NO, I DO NOT.

24 Q 2009?

25 A NO, I DO NOT.

1 Q SO WHAT YOU HAVE IS FROM 14 YEARS AGO?

2 A YES, FROM 14 YEARS AGO, APPROXIMATELY.

3 MR. ROSS: NOTHING FURTHER.

4 THE COURT: MR. BREDENBERG?

5 MR. BREDENBERG: NOTHING, YOUR HONOR.

6 THE COURT: VERY GOOD. DR. GUTIERREZ, I DID
7 HAVE SOME QUESTIONS FOR YOU, SIR. LET ME BEGIN WITH
8 SOMETHING OF A PROSAIC ONE IS THE BEST TERM.

9 IN YOUR REFERENCES TO THE DSM-V, HAVE YOU BEEN
10 REFERRING TO THE DSM-IV-TR?

11 THE WITNESS: YES, I HAVE, YOUR HONOR.

12 THE COURT: AM I CORRECT THERE IS ANOTHER
13 VERSION OF THE DSM-IV?

14 THE WITNESS: THERE IS A DSM-IV AND THEN
15 APPROXIMATELY SIX OR SEVEN YEARS AGO THERE WAS THE
16 DSM-IV-TR WHERE THE TEXT FOR SOME OF THE DISORDERS LISTED
17 IN THERE WAS REVISED A LITTLE BIT, SO IT'S A TEXT
18 REVISION. THERE WERE NO ADDITIONS OR DELETIONS IN TERMS
19 OF THE DISORDERS LISTED FROM DSM-IV TO THE DSM-IV-TR.
20 THE DISORDERS REMAIN THE SAME. THE NUMBERS THAT
21 CORRESPOND TO THEM REMAIN THE SAME, BUT JUST THE
22 DESCRIPTIONS OR A LITTLE BIT OF THE TEXT DESCRIBING THEM
23 WAS ALTERED IN SOME OF THOSE DISORDERS.

24 THE COURT: OKAY. ARE THERE INDIVIDUALS WHO
25 COMMIT MULTIPLE RAPES WHO DO NOT OR ATTEMPT TO COMMIT

1 MULTIPLE RAPES WHO DO NOT SUFFER FROM PARAPHILIC
2 CONDITION?

3 THE WITNESS: I THINK THAT THAT IS A
4 POSSIBILITY, BUT I HAVEN'T ENCOUNTERED THAT IN MY
5 PRACTICE NECESSARILY. I THINK WHEN YOU ARE GETTING INTO
6 THE NUMBERS OF RAPES THAT ARE OCCURRING, IT WOULD DEPEND
7 ON THE NUMBER OF RAPES THAT OCCUR AND WHAT IS FUELING
8 THOSE RAPES OR WHAT IS THE PRECURSOR TO THOSE.

9 IF AN INDIVIDUAL COMMITTED SOME RAPES IN A
10 SITUATION PERHAPS LIKE AN ARMED ROBBERY OR SOMETHING LIKE
11 THAT AND IT WAS JUST KIND OF IT OCCURRED AFTER THE FACT
12 AND WASN'T NECESSARILY THE INTENTION INITIALLY OF THE
13 CRIME, THEN I THINK IT COULD BE POSSIBLE WHERE AN
14 INDIVIDUAL WOULD COMMIT MULTIPLE RAPES BUT NOT
15 NECESSARILY BE DIAGNOSED WITH PARAPHILIA NOT OTHERWISE
16 SPECIFIED, NON-CONSENT.

17 THE COURT: IS THERE -- I USED THE TERM
18 MULTIPLE. IS THERE SOME NUMBER OF RAPES THAT WOULD BE
19 CONSIDERED A VALID INDICATOR OF WHETHER A RAPIST DID HAVE
20 THIS PARAPHILIA NOS, NON-CONSENT?

21 THE WITNESS: NO, THERE IS NO SPECIFIC NUMBER
22 THAT IS A THRESHOLD FOR DETERMINING NON-CONSENT VERSUS
23 MAYBE JUST GENERAL ANTISOCIAL BEHAVIOR. I THINK WHAT I
24 ATTEMPT TO DO AND WHAT OTHER PRACTITIONERS DO WOULD BE TO
25 LOOK AT IT ON A CASE BY CASE BASIS TO SEE WHAT THE

1 CIRCUMSTANCES WERE PERTAINING TO THE RAPES AND IF THERE
2 WAS EVIDENCE OF THAT PARAPHILIA, NOT JUST FROM THE
3 ACTIONS THEMSELVES, BUT OTHER EVIDENCE, PERHAPS WHETHER
4 IT BE POLYGRAPH OR PRIOR ADMISSIONS, OR THINGS OF THAT
5 NATURE THAT MIGHT LEND ITSELF TO DIFFERENTIATING BETWEEN
6 PARAPHILIA AND A RAPIST WHO IS NOT PARAPHILIC.

7 THE COURT: IS THERE ANY DATA OUT THERE IN
8 YOUR FIELD, SIR, THAT TRIES TO MAKE ANY KIND OF AN
9 ESTIMATION AS TO THE PERCENTAGE OF SERIAL RAPISTS, IF
10 THAT IS THE CORRECT TERM TO USE, PEOPLE WHO -- MEN WHO
11 COMMIT MULTIPLE RAPES, THE BREAKDOWN OF THOSE WHO ARE
12 PARAPHILIC AND THOSE WHO ARE NOT?

13 THE WITNESS: I AM NOT AWARE OF THAT TYPE OF
14 DATA MAKING THAT DIFFERENTIATION, YOUR HONOR.

15 THE COURT: THE FACTORS THAT YOU JUST
16 MENTIONED THAT YOU LOOK TO TO DETERMINE WHETHER A
17 PARAPHILIA IS IN PLAY FOR A RAPIST, ARE THESE FACTORS
18 SUCH AS THE CIRCUMSTANCES OF THE RAPES, PRIOR ADMISSIONS
19 BY THE PERSON, YOU HAVE RELIED ON OTHER PSYCHOLOGICAL
20 TESTING, PERSONALITY INVENTORY I BELIEVE YOU MENTIONED --

21 THE WITNESS: CORRECT.

22 THE COURT: -- IS THIS PART OF A STANDARD SET
23 OF TESTS OR FACTORS THAT PSYCHOLOGISTS, FORENSIC
24 PSYCHOLOGISTS LOOK AT IN TRYING TO DETERMINE WHETHER A
25 RAPIST HAS A PARAPHILIA AND DISTINGUISH THAT PERSON FROM

1 SOMEBODY WHO DOESN'T?

2 THE WITNESS: YES. I WOULD SAY THAT THERE ARE
3 A NUMBER OF FACTORS THAT WE LOOK AT THAT ARE GENERALLY
4 ACCEPTED IN THE FIELD IN TERMS OF TRYING TO DIFFERENTIATE
5 PARAPHILIA NOT OTHERWISE SPECIFIED, NON-CONSENT, TO AN
6 INDIVIDUAL WHO JUST COMMITS SOME RAPES BUT MIGHT NOT FIT
7 THAT DIAGNOSTIC CLASSIFICATION, AND WE LOOK AT SOME OF
8 THE THINGS I MENTIONED BEFORE ABOUT ENGAGING IN RAPE OR
9 FORCIBLE SEXUAL INTERCOURSE WHEN THERE IS AN AVAILABLE
10 CONSENTING PARTNER, BEING ABLE TO CONTINUE WITH THE
11 SEXUAL ASSAULT, MAINTAINING AN ERECTION EVEN WHEN AN
12 INDIVIDUAL IS RESISTING OR FIGHTING BACK, OTHER
13 INDICATORS ABOUT REPEATED OFFENDING AGAINST A PARTICULAR
14 INDIVIDUAL IS SUGGESTIVE OF AN INDIVIDUAL WHO MIGHT BE
15 PARAPHILIC AS OPPOSED TO JUST AN ANTISOCIAL IN NATURE.

16 SO THERE ARE CERTAIN THINGS THAT WE DO LOOK AT
17 AS PSYCHOLOGISTS, AS FORENSIC PSYCHOLOGISTS, TO TRY TO
18 DIFFERENTIATE THE PERSON WHO HAS THE PARAPHILIA COMPARED
19 TO THE PERSON WHO DOES NOT.

20 THE COURT: AND I GATHER FROM YOUR TESTIMONY
21 AND THERE IS WITHIN THE FORENSIC PSYCHOLOGICAL COMMUNITY
22 THERE IS A RECOGNIZED SET OF CONSIDERATIONS THAT ARE
23 TAKEN INTO ACCOUNT?

24 THE WITNESS: I WOULD SAY THAT IT'S GENERALLY
25 ACCEPTED. I WOULDN'T SAY THAT THERE IS A LIST, PER SE,

1 THAT IS RECOGNIZED BY A GOVERNING BODY OF ANY SORT, BUT
2 MOST, IF NOT ALL OF THE EVALUATORS WHO CONSIDER THIS
3 DIAGNOSIS WILL LOOK AT SOME OF THESE BEHAVIORAL AND
4 PSYCHOLOGICAL INDICATORS AS EVIDENCE OF A PARAPHILIA.

5 THE COURT: ARE THERE EMPIRICAL STUDIES THAT
6 YOU ARE AWARE OF THAT VALIDATE USE OF THOSE FACTORS AS
7 ACCURATE TOOLS TO DIAGNOSIS THIS PARAPHILIA NOS,
8 NONCONSENT?

9 THE WITNESS: THERE ARE SOME STUDIES THAT LOOK
10 AT DIFFERENTIATING BETWEEN PARAPHILIA NOT OTHERWISE
11 SPECIFIED AND PEOPLE WITH ANTISOCIAL PERSONALITY DISORDER
12 OR SEXUAL SADISM, ANOTHER DIAGNOSIS THAT MIGHT BE
13 APPLICABLE TO AN INDIVIDUAL WHO COMMITS VARIOUS RAPES,
14 AND THESE STUDIES DO LOOK AT BEHAVIORAL INDICATORS THAT
15 DISTINGUISH ONE GROUP FROM ANOTHER.

16 THE COURT: HAVE THERE BEEN ANY STUDIES LIKE
17 THAT THAT YOU ARE AWARE OF THAT DEAL SPECIFICALLY WITH
18 THIS PARAPHILIA NOT OTHERWISE SPECIFIED, NONCONSENT, AND
19 PERSONS WHO DON'T HAVE, TO DISTINGUISH THAT FROM PERSONS
20 WHO DO NOT HAVE PARAPHILIA?

21 THE WITNESS: I CAN'T THINK OF ANY OFF THE TOP
22 OF MY HEAD, YOUR HONOR.

23 THE COURT: DO YOU UNDERSTAND, SIR, OR CAN YOU
24 JUST EXPLAIN TO ME BRIEFLY, IF YOU KNOW, THE BASIS FOR
25 THE AMERICAN PSYCHIATRIC ASSOCIATION'S REJECTION OF THIS

1 PARAPHILIA NOT OTHERWISE SPECIFIED, NONCONSENT DIAGNOSIS?

2 THE WITNESS: MY UNDERSTANDING OF THAT IS THAT
3 IT WAS ESSENTIALLY A POLITICAL DECISION. THERE IS, AS WE
4 HAVE TALKED ABOUT, SOME DEBATE AND DISCUSSION ABOUT
5 WHETHER IT'S AN APPROPRIATE DIAGNOSIS FOR THESE TYPES OF
6 PROCEEDINGS.

7 THE AMERICAN PSYCHIATRIC ASSOCIATION HAS LONG
8 TAKEN A VIEW THAT IS OPPOSED TO CIVIL COMMITMENT FOR
9 INDIVIDUALS WHO ARE BEING CONSIDERED AS SEXUALLY
10 DANGEROUS. SO IT'S -- IT WASN'T AN UNEXPECTED DECISION
11 FOR MANY THAT THE APA DECIDED NOT TO INCLUDE THIS
12 DIAGNOSIS IN THE DSM-V.

13 THE COURT: YOU SEE THAT DECISION AS BASED
14 MORE ON VALUE JUDGMENTS OUTSIDE THE REALM OF SCIENCE?

15 THE WITNESS: I DO.

16 THE COURT: NOW, MY UNDERSTANDING OF YOUR
17 TESTIMONY IS THAT EVEN IF YOU HAD NOT DIAGNOSED MR.
18 ANTONE WITH THIS PARAPHILIA NOT OTHERWISE SPECIFIED,
19 NONCONSENT, YOU WOULD STILL DEEM HIM TO BE A SEXUALLY
20 DANGEROUS PERSON UNDER THE ADAM WALSH ACT; IS THAT
21 CORRECT?

22 THE WITNESS: THAT IS CORRECT.

23 THE COURT: CAN YOU EXPLAIN WHY HE WOULD
24 STILL, IN YOUR OPINION, QUALIFY AS SUCH NOTWITHSTANDING
25 THE ABSENCE OF THAT DIAGNOSIS?

1 THE WITNESS: SURE. MR. ANTONE STILL HAS THE
2 OTHER DIAGNOSIS OF ANTISOCIAL PERSONALITY DISORDER WHICH
3 IS ESSENTIALLY CHARACTERIZED BY HIS REPEATED INSTANCES OF
4 BREAKING THE LAW, OF ARRESTS, AND WHEN YOU LOOK AT THE
5 TOTALITY OF HIS CRIMINAL RECORD, THERE ARE SOME
6 RELATIVELY MINOR OFFENSES THAT WERE NONSEXUAL IN NATURE,
7 BUT THE BULK, THE MAJORITY OF HIS OFFENDING HAS BEEN
8 SEXUAL IN NATURE.

9 ONE OF THE MAIN FACTORS OF ANTISOCIAL
10 PERSONALITY DISORDER IS THAT IMPULSIVITY THAT IS LISTED
11 AS ONE OF THE CRITERIA, AND IN MY OPINION, IMPULSIVITY
12 HAS PLAYED A LARGE ROLE IN HIS PATTERN OF OFFENDING
13 AGAINST FEMALES. SO IT'S NOT JUST THE PARAPHILIA THAT
14 I THINK IS APPLICABLE TO MR. ANTONE, BUT ALSO THE
15 ANTISOCIAL PERSONALITY DISORDER AS WELL AS THE SUBSTANCE
16 DEPENDENCE THAT HAS BEEN, IF NOT ALL OF THE INSTANCES OF
17 SEXUAL OFFENDING, MOST, HAS PLAYED AN IMPORTANT FACTOR.

18 SO HE STILL HAS THESE OTHER CONDITIONS THAT
19 ADVERSELY AFFECT HIS FUNCTIONING EVEN IN ABSENCE OF THE
20 PARAPHILIA.

21 THE COURT: BUT THOSE ILLNESSES WOULD EXPRESS
22 THEMSELVES IN THE CONTINUATION OF THE RAPE CONDUCT, THE
23 OFFENSE CONDUCT?

24 THE WITNESS: I BELIEVE THEY WOULD BECAUSE
25 THAT, AS I MENTIONED, THAT HAS BEEN ESSENTIALLY THE CRUX

1 OF HIS OFFENDING HAS BEEN SEXUAL IN NATURE.

2 THE COURT: NOW, MY UNDERSTANDING IS THAT YOU
3 DEEM ALL OF THE DIAGNOSIS -- DIAGNOSES, THE THREE
4 DIAGNOSES THAT YOU MADE, EACH ONE OF THE ILLNESS THAT YOU
5 DIAGNOSED TO BE SERIOUS MENTAL ILLNESSES, ABNORMALITIES
6 OR DISORDERS; IS THAT CORRECT?

7 A I LISTED IN MY REPORT, I LISTED THE PARAPHILIA AND
8 THE ANTISOCIAL PERSONALITY DISORDER AS SERIOUS MENTAL
9 ILLNESSES, ABNORMALITIES OR DISORDERS. I DID NOT LIST
10 THE POLYSUBSTANCE DEPENDENCE IN THAT FINAL PARAGRAPH
11 BECAUSE IT WAS MY UNDERSTANDING THAT JUST A SUBSTANCE
12 DEPENDENCE DIAGNOSIS ALONE COULD NOT ESSENTIALLY STAND BY
13 ITSELF AS A REASON FOR CIVIL COMMITMENT, AND I MIGHT BE
14 INCORRECT IN THAT DETERMINATION OR THAT ASSESSMENT, BUT
15 EVEN THOUGH I DIDN'T LIST IT THERE WITH THE OTHER TWO, I
16 CERTAINLY THINK IT'S AN IMPORTANT, VITAL PART OF MR.
17 ANTONE'S DIAGNOSTIC PICTURE AND HOW HE RELATES TO OTHERS
18 IN HIS ENVIRONMENT.

19 THE COURT: I SEE. OKAY. WELL, MY QUESTION
20 IS, THEN WITH RESPECT TO THE TWO DIAGNOSES THAT YOU HAVE
21 CONSIDERED TO BE FOR SERIOUS MENTAL ILLNESSES AND
22 ABNORMALITY OR DISORDERS, THE PARAPHILIA NOS, NONCONSENT,
23 AND THEN THE ANTISOCIAL PERSONALITY DISORDER, WHY DO YOU
24 DEEM THEM TO BE SERIOUS MENTAL ILLNESSES, ABNORMALITIES
25 OR DISORDERS?

1 THE WITNESS: I DEEM THEM TO BE SERIOUS BASED
2 ON THE SERIOUS IMPLICATIONS THAT THEY HAVE HAD ON MR.
3 ANTONE'S LIFE AND ALSO ON THE SERIOUS IMPLICATIONS THAT
4 THEY HAVE -- THAT THESE DISORDERS HAVE HAD ON THE LIVES
5 OF HIS VICTIMS.

6 THERE IS CERTAINLY VERY -- YOU KNOW, THE
7 SERIOUSNESS OF IT IS VERY SIGNIFICANT IN THAT RESPECT, IN
8 THOSE RESPECTS.

9 THE COURT: SO IN THE FIELD OF FORENSIC
10 PSYCHOLOGY, WHEN ONE SPEAKS OF SERIOUS MENTAL ILLNESSES,
11 DISORDERS OR ABNORMALITIES, THE FOCUS IS ON THE IMPACT
12 THAT THE ILLNESS HAS ON THE PERSON'S LIFE AND THE LIVES
13 OF OTHERS THAT THE PERSON HAS INTERACTIONS WITH; IS THAT
14 ACCURATE?

15 THE WITNESS: WELL, I WOULD SAY FOR FIRST AND
16 FOREMOST YOU ARE LOOKING AT THE INDIVIDUAL, HOW IT
17 AFFECTS THAT PERSON'S DAY-TO-DAY FUNCTIONING, AND BY
18 NATURE, OR BY DEFINITION, PART OF THE DEFINITION OF THE
19 PARAPHILIA IS THAT IF YOU LOOK IN THE DSM-IV-TR, IT HAS
20 TO HAVE SOME SORT OF -- THERE NEEDS TO BE SOME SORT OF
21 MARKED IMPAIRMENT, OR YOU KNOW, SOME SORT OF NEGATIVE
22 CONSEQUENCES ASSOCIATED TO IT, AND IN MR. ANTONE'S CASE,
23 IT CERTAINLY HAS WITH RESPECT TO THE RELATIONSHIPS WITH
24 FAMILY AND FRIENDS AND ALSO AS SEEN IN HIS NUMEROUS
25 CONVICTIONS AND INCARCERATIONS. SO THAT IS THE FIRST

1 PART OF IT, THE SERIOUSNESS OF IT AS IT AFFECTS HIM.

2 BUT THEN ALSO IT'S REASONABLE, I THINK, TO
3 LOOK AT THE SERIOUSNESS OF HIS ACTIONS AS THEY RELATE TO
4 THE VICTIMS.

5 THE COURT: OKAY. WHY IS IT -- WELL, YOU MAY
6 HAVE TOUCHED ON THIS BEFORE -- BUT I STILL WANT TO MAKE
7 SURE I HAVE A FULL UNDERSTANDING OF THIS.

8 AS I UNDERSTAND THE RECORD THAT WE HAVE BEFORE
9 US, MR. ANTONE DOES NOT HAVE A HISTORY WHILE BEING IN
10 PRISON OF ENGAGING IN BEHAVIOR THAT MANIFESTS THIS
11 PARAPHILIA NOS, NONCONSENT?

12 THE WITNESS: CORRECT.

13 THE COURT: AND THAT EXPANDS OVER A
14 SIGNIFICANT PERIOD OF TIME?

15 THE WITNESS: THAT'S RIGHT.

16 THE COURT: WHAT, AGAIN, DO YOU MAKE OF THAT?
17 IN OTHER WORDS, HOW DOES THAT FIGURE INTO YOUR ANALYSIS?

18 THE WITNESS: WHAT I MAKE OF THAT, YOUR HONOR,
19 IS THAT IT'S COMMENDABLE THAT HE HAS BEEN ABLE TO
20 ESSENTIALLY DISPLAY CLEAR CONDUCT OVER THE APPROXIMATELY
21 14 YEARS THAT HE HAS BEEN IN CUSTODY, BUT THERE IS A
22 TREMENDOUS DIFFERENCE IN TERMS OF MANAGING ONE'S BEHAVIOR
23 IN A STRUCTURED ENVIRONMENT LIKE A PRISON COMPARED TO
24 BEING ABLE TO CONTROL ONESELF OR CHOOSING TO CONTROL
25 ONESELF WHEN OUT IN THE COMMUNITY.

1 IN MY WORK OVER THE LAST TEN YEARS, I HAVE
2 SEEN NUMEROUS CASES OF INDIVIDUALS WHO HAVE OFFENDED,
3 BEEN IN CUSTODY AND DONE RELATIVELY WELL IN CUSTODY, BUT
4 WHEN THEY GO BACK OUT ON THE STREET, THEY REOFFEND. THIS
5 ISN'T JUST FOR SEXUAL OFFENDERS, BUT OFFENDERS IN
6 GENERAL.

7 MANY OF THE INDIVIDUALS THAT I HAVE HAD THE
8 OCCASION TO EVALUATE FOR THIS ADAM WALSH LAW HAVE HAD
9 PRIORS THAT THEY SERVED TIME FOR, AND IT'S NOT UNUSUAL
10 FOR THEM TO DISPLAY OR ENGAGE IN APPROPRIATE BEHAVIOR
11 WHEN IN CUSTODY. THAT COULD BE FOR A VARIETY OF FACTORS.
12 IT MIGHT BE DUE TO THE LIKELIHOOD OF BEING DETECTED OR
13 THE IMMEDIATE SANCTIONS THAT MIGHT OCCUR IF THEY WERE TO
14 ENGAGE IN ANY TYPE OF SEXUAL ACTING OUT OR OTHER
15 ANTISOCIAL BEHAVIORS.

16 FOR SOME INDIVIDUALS IT MIGHT REALLY HAVE TO
17 DO WITH THE ENVIRONMENT AND NOT NECESSARILY BEING AROUSED
18 OR STIMULATED BY THE ENVIRONMENT THAT ONE IS IN.

19 MR. ANTONE'S CASE, ALL OF HIS -- ALL OF HIS
20 OFFENSES WERE OUT IN THE COMMUNITY. HE WAS AMONG
21 ACQUAINTANCES, SUBSTANCE ABUSE WAS INVOLVED. I AM NOT
22 CERTAIN, BUT IT APPEARS THAT MOST OF THE -- IF NOT ALL OF
23 THE VICTIMS WERE NATIVE AMERICANS, SO THOSE CONDITIONS
24 THAT WERE PRESENT IN THAT ENVIRONMENT WHEN HE OFFENDED
25 ARE NOT PRESENT IN HIS CURRENT ENVIRONMENT.

1 SO I DON'T KNOW THAT -- I DON'T BELIEVE THAT
2 DEMONSTRATION OF GOOD CONDUCT WHILE INCARCERATED, NOT
3 JUST FOR MR. ANTONE, BUT FOR OTHER INDIVIDUALS, I DON'T
4 THINK THAT THAT IS NECESSARILY A GOOD BAROMETER OF HOW
5 THEY WILL BEHAVE IN THE COMMUNITY.

6 THE COURT: ONE REASON FOR MY QUESTION WAS
7 THAT ONE OF THE ELEMENTS, AS I UNDERSTAND, ONE OF THE
8 DEFINING CHARACTERISTICS OF THIS PARAPHILIA IS THAT THE
9 PERSON FEELS AN URGE THAT I ASSUME IS FAIRLY INTENSE OR
10 ELSE IT WOULDN'T BE A MENTAL ILLNESS, AN URGE TO ENGAGE
11 IN THESE NONCONSENSUAL SEXUAL ENCOUNTERS, AND I GATHER
12 FROM WHAT YOU ARE SAYING, DR. GUTIERREZ, THAT THE
13 STRUCTURE CAN FACILITATE THE PERSON CONTROLLING THAT
14 URGE, BUT IF THEY GET OUT INTO THE COMMUNITY WITHOUT SOME
15 OF THESE CONTROLS THAT EXIST IN THE PRISON ENVIRONMENT,
16 ABSENT THOSE CONTROLS, THE CONDUCT MAY REOCCUR.

17 IS THAT A FAIR STATEMENT AND AN ACCURATE
18 STATEMENT?

19 THE WITNESS: I WOULD SAY THAT IS FAIR. I
20 DON'T KNOW THAT BEING IN THIS ENVIRONMENT NECESSARILY HAS
21 EXTINGUISHED ANY OF HIS URGES.

22 I MEAN, IT'S POSSIBLE THAT HE IS STILL
23 EXPERIENCING SOME URGES, BUT JUST CHOOSING NOT TO ACT ON
24 THEM OR IT'S POSSIBLE THAT HE IS -- HE HAS ANOTHER
25 RELEASE, WHETHER IT BE MASTURBATION OR SOMETHING ELSE, SO

1 THAT HE IS NOT OFFENDING AGAINST WOMEN AT THIS TIME, BUT
2 IT IS MY OPINION THAT THESE URGES, WITHOUT TREATMENT,
3 WOULD STILL BE PRESENT FOR HIM IF RELEASED OUT INTO THE
4 COMMUNITY.

5 THE COURT: HOW EFFECTIVE IS SEX OFFENDER
6 TREATMENT? DO YOU HAVE AN OPINION ON THAT?

7 THE WITNESS: I KNOW THAT -- I AM NOT A SEX
8 OFFENDER TREATMENT PROVIDER. BUT I DO KNOW THAT IT CAN
9 BE HELPFUL FOR SOME INDIVIDUALS. IT DOESN'T ALWAYS WORK.
10 IT DOESN'T WORK WITH EVERYBODY. BUT FOR SOME
11 INDIVIDUALS, IT CAN BE EFFECTIVE IN TERMS OF REDUCING
12 THEIR RISK OF RECIDIVISM.

13 THE COURT: AT VARIOUS TIMES YOU AND COUNSEL
14 HAVE BOTH USED TERMS LIKE THIS STRUCTURED TREATMENT
15 PROGRAM OR STRUCTURED SETTING. CAN YOU EXPLAIN WHAT
16 THOSE TERMS MEAN TO YOU?

17 THE WITNESS: SURE. WELL, STRUCTURED SETTING,
18 WHAT I MEAN BY THAT IS ESSENTIALLY A PRISON WHERE THERE
19 IS SOME STRUCTURE AND THERE IS MORE CONTROL OF AN
20 INMATE'S MOVEMENT AND BEHAVIOR. CERTAINLY MORE
21 RESTRICTION THAN AN INDIVIDUAL WOULD FIND IN THE
22 COMMUNITY OR EVEN A HALFWAY HOUSE. THERE IS CERTAINLY
23 MORE RESTRICTION IN TERMS OF WHAT AN INDIVIDUAL CAN DO
24 AND WHERE HE CAN MOVE AROUND TO WHILE INCARCERATED.

25 AS FAR AS STRUCTURED TREATMENT, BY THAT I MEAN

1 REALLY AN EMPHASIS ON THE TREATMENT OF THE INDIVIDUAL. I
2 KNOW THAT MR. ANTONE HAS HAD A LITTLE BIT OF TREATMENT IN
3 THE BUREAU OF PRISONS, GENERALLY, OR IN GENERAL MATTERS,
4 STRESS MANAGEMENT, A LITTLE BIT OF ANGER MANAGEMENT, I
5 BELIEVE, A LITTLE BIT OF TREATMENT PERTAINING TO
6 SUBSTANCE ABUSE, BUT THE STRUCTURED TREATMENT I AM
7 ESSENTIALLY REFERRING TO WOULD BE MORE EXTENSIVE AND IN
8 DEPTH TREATMENT TO ADDRESS SEXUAL OFFENDING AND SUBSTANCE
9 ABUSE.

10 THE COURT: OKAY. THANK YOU, DR. GUTIERREZ.
11 IS THERE ANY FOLLOW-UP, MR. BREDENBERG, TO MY QUESTIONS?

12 MR. BREDENBERG: YES, YOUR HONOR. JUST A
13 COUPLE OF THINGS.

14 FURTHER EXAMINATION BY MR. BREDENBERG:

15 Q ARE THERE SCIENTIFIC TOOLS OUT THERE IN WHICH YOU CAN
16 IDENTIFY AROUSAL TO NONCONSENSUAL SEX?

17 A YES. THERE IS A TOOL, A PENILE PLETHYSMOGRAPH WHICH
18 IS USED TO ESSENTIALLY ASCERTAIN WHETHER AN INDIVIDUAL IS
19 AROUSSED BY NONCONSENSUAL SEX, CHILDREN, WHATEVER THE
20 STIMULI MIGHT BE FOR PPG, PENILE PLETHYSMOGRAPH.

21 Q ARE THERE OTHER MEASURES OF OTHER TESTS THAT YOU KNOW
22 OF?

23 A THERE IS THE ABEL SCREENING THAT I HAD MENTIONED
24 EARLIER FOR AN INDIVIDUAL PRESENTED WITH SOME VISUAL
25 STIMULI AND BASED ON THE AMOUNT OF TIME THAT THE PERSON

1 IS LOOKING AT PICTURES, THE EVALUATOR CAN MAKE A
2 DETERMINATION AS TO WHETHER OR NOT THERE IS ANY SEXUAL
3 AROUSAL THERE.

4 Q DID YOU TESTIFY AS TO THE USE OF POLYGRAPHS?

5 A POLYGRAPHS AS WELL, WHILE NOT DIRECTLY MEASURING
6 PHYSIOLOGICAL AROUSAL, POLYGRAPHS ARE USED TO ASCERTAIN
7 WHETHER OR NOT AN INDIVIDUAL IS BEING DECEPTIVE OR NOT
8 WITH RESPECT TO QUESTIONS, AND IN THIS CASE, COULD BE
9 APPLICABLE TO QUESTIONS ABOUT SEXUAL OFFENDING.

10 Q JUDGE GATES ASKED YOU ABOUT, YOU KNOW, THE FACT THAT
11 MR. ANTONE MAY HAVE BEEN IN PRISON FOR A LONG TIME
12 WITHOUT OFFENDING. MOST OF HIS VICTIMS, OR ALL OF THE
13 VICTIMS WERE WOMEN OR GIRLS; RIGHT?

14 A CORRECT.

15 Q DOES HE HAVE ACCESS TO THAT TYPE OF VICTIM IN THE
16 PRISON SYSTEM?

17 A HE HAS ACCESS TO WOMEN WHO ARE STAFF MEMBERS AT THE
18 INSTITUTION, AND IF HE WAS EVER IN THE VISITING ROOM, FOR
19 INSTANCE, THERE MIGHT BE WOMEN THERE. THERE MIGHT,
20 PERHAPS, BE CHILDREN IN THAT ENVIRONMENT AS WELL, BUT
21 THERE WOULDN'T BE ANY CHILDREN INSIDE THE PRISON.

22 Q WHAT IS THE LIKELIHOOD OF THE OPPORTUNITY HE WOULD BE
23 ABLE TO ACCESS THOSE VICTIMS IN THAT SETTING?

24 A IT WOULD BE A LOW LIKELIHOOD.

25 MR. BREDENBERG: NOTHING ELSE, YOUR HONOR.

1 THE COURT: THANK YOU, SIR. MR. ROSS?

2 MR. ROSS: I DO.

3 FURTHER EXAMINATION BY MR. ROSS:

4 Q PICKING UP ON WHAT HIS HONOR ASKED YOU, HE ASKED YOU
5 ABOUT PARAPHILIA NOS, NONCONSENT. THAT IS ONE OF -- THAT
6 DIAGNOSIS IS A SERIOUS MENTAL DISORDER; RIGHT?

7 A YES, IT IS.

8 Q ALSO, THE ONLY OTHER SERIOUS MENTAL DISORDER IS THE
9 ANTISOCIAL PERSONALITY DISORDER; IS THAT RIGHT?

10 A AS I LISTED THEM IN THE REPORT, PARAPHILIA NOT
11 OTHERWISE SPECIFIED AND THE ANTISOCIAL PERSONALITY
12 DISORDER AS DIAGNOSES THAT I CONSIDERED WOULD BE RELEVANT
13 TO POTENTIAL CIVIL COMMITMENT, EXCLUDING THE
14 POLYSUBSTANCE DEPENDENCE, AS I MENTIONED BEFORE.

15 Q SO ASSUMING THAT THE PARAPHILIA NOS, NONCONSENTING IS
16 GONE, THAT WOULD LEAVE THE ANTISOCIAL PERSONALITY
17 DISORDER ONLY AS A SERIOUS MENTAL DISORDER?

18 A YES.

19 Q AND YOU ARE AWARE THAT DR. PHENIX HAS WRITTEN AN
20 ARTICLE STATING ANTISOCIAL PERSONALITY DISORDER IS NOT
21 ENOUGH?

22 A I AM NOT AWARE OF THAT ARTICLE.

23 Q SO YOU AREN'T AWARE THAT -- AND I AM QUOTING FROM HER
24 FROM HER ARTICLE -- "IN OUR OPINION, AN ANTISOCIAL
25 PERSONALITY DISORDER DIAGNOSIS ALONE IS NOT A SUFFICIENT

1 DIAGNOSTIC CONDITION FOR AN SVP/(SLASH)SDP CIVIL
2 COMMITMENT WITHOUT AN INTENDED DIAGNOSIS OF PARAPHILIA
3 THAT INDICATES AN ESTABLISHED DEVIANT SEXUAL PREFERENCE."

4 YOU WEREN'T AWARE OF THAT IN HER ARTICLE?

5 A NO.

6 Q ALSO, WERE YOU AWARE OF THIS COMMENT, AGAIN, "THE
7 DIAGNOSIS OF ANTISOCIAL PERSONALITY DISORDER" -- WHICH IS
8 ON THE LAST PAGE OF HER ARTICLE -- "ALONE, WITHOUT AN
9 ATTENDING DIAGNOSIS OF PARAPHILIA, WOULD ALMOST NEVER
10 LEAD TO A FINDING THAT AN OFFENDER WOULD BE LIKELY OR
11 VERY LIKELY TO REOFFEND WITHOUT ANOTHER SEXUAL VIOLENT
12 ACT" -- I AM SORRY -- "WITH ANOTHER SEXUALLY VIOLENT
13 ACT."

14 YOU WEREN'T AWARE OF THAT IN THE ARTICLE EITHER?

15 A I AM SORRY. CAN YOU REPEAT THAT?

16 Q SURE. SHE WILL READ IT.

17 MS. ALLEN: YOUR HONOR, SONYA ALLEN. I AM
18 GOING TO READ THIS FOR MR. ROSS.

19 THE COURT: I AM NOT GOING TO ALLOW THAT. MR.
20 ROSS, IF YOU CAN, YOU NEED TO STAY --

21 MR. BREDENBERG: YOUR HONOR, AT THIS POINT I
22 WOULD OBJECT BECAUSE HE HAS ALREADY SAID HE IS NOT AWARE
23 OF THE ARTICLE, SO IT'S CERTAINLY LIKELY THAT HE WOULDN'T
24 BE AWARE OF THE COMMENTS IN THE ARTICLE.

25 THE COURT: I AM GOING TO ALLOW IT.

1 MR. ROSS: LET'S TRY THIS AGAIN.

2 Q AGAIN, "THE DIAGNOSIS OF ANTISOCIAL PERSONALITY
3 DISORDER ALONE, WITHOUT AN ATTENDING DIAGNOSIS OF
4 PARAPHILIA, WOULD ALMOST NEVER LEAD TO A FINDING THAT AN
5 OFFENDER WOULD BE LIKELY OR VERY LIKELY TO REOFFEND WITH
6 ANOTHER SEXUALLY VIOLENT ACT."

7 YOU WEREN'T AWARE OF THAT COMMENT EITHER?

8 A NO, I WASN'T.

9 Q LASTLY, YOU WEREN'T AWARE OF, "IN SUMMARY, CAREFUL
10 CONSIDERATION OF THE ACTIVITIES WITH WHICH THE FORENSIC
11 MENTAL HEALTH EXPERT IS CONCERNED INDICATES THAT A
12 DIAGNOSIS OF ANTISOCIAL PERSONALITY DISORDER ALONE IS NOT
13 ENOUGH TO CALL FOR AN SVP/(SLASH)SDP DESIGNATION."

14 YOU WEREN'T AWARE OF THAT IN DR. PHENIX'S ARTICLE?

15 A NO.

16 Q NOW, SVP IS SEXUALLY VIOLENT PREDATOR; IS THAT RIGHT?

17 A YES.

18 Q AND SDP IS SEXUALLY DANGEROUS PREDATOR -- PERSON.

19 EXCUSE ME.

20 A CORRECT.

21 Q YOU HAVE REVIEWED SEVERAL DOCUMENTS ASSOCIATED WITH
22 THIS CASE?

23 A YES, I HAVE.

24 Q IS THERE ANYTHING IN THOSE DOCUMENTS WHERE MR. ANTONE
25 REPORTED HE HAD AN URGE TO RAPE?

1 A NOT THAT I RECALL.

2 MR. ROSS: NOTHING FURTHER.

3 THE COURT: MR. BREDENBERG?

4 MR. BREDENBERG: NOTHING, YOUR HONOR.

5 THE COURT: VERY GOOD. LET'S TAKE OUR
6 AFTERNOON -- OUR LUNCH BREAK. EXCUSE ME. WE'LL BE IN
7 RECESS UNTIL 1:15.

8 (WHEREUPON, A LUNCH RECESS WAS TAKEN.)

9 THE COURT: MR. ROSS, SIR?

10 MR. ROSS: IF I MAY, CAN I GIVE THE WHOLE CITE
11 OF THE ARTICLE I WAS QUOTING FROM?

12 THE COURT: I WILL ALLOW YOU TO PUT THAT INTO
13 THE RECORD.

14 MR. ROSS: THANK YOU. ANTISOCIAL PERSONALITY
15 DISORDER IS NOT ENOUGH: A REPLY TO -- I AM GOING TO
16 SPELL THE NAME -- SREENIBASAN, WEINBERGER AND GARRIC, BY
17 JACK VOGNSEN, PHD., AND AMY PHENIX, AND THE CITE FOR THAT
18 IS JOURNAL OF AMERICAN ACADEMY OF PSYCHIATRY AND THE LAW,
19 VOLUME 32, NUMBER IV, 2004 ARTICLE, AND IT'S ON PAGE --
20 STARTS ON PAGE 440.

21 THE COURT: OKAY. THANK YOU.

22 IS THERE ANY OTHER EVIDENCE FOR THE
23 GOVERNMENT?

24 MR. ROYSTER: NO, YOUR HONOR. THE GOVERNMENT
25 RESTS.

1 THE COURT: THANK YOU, SIR. MR. ROSS, IS
2 THERE ANY EVIDENCE FOR THE RESPONDENT?

3 MR. WATERS: YOUR HONOR, BEFORE THE
4 RESPONDENT --

5 THE COURT: MR. WATERS.

6 MR. WATERS: YOUR HONOR, BEFORE THE RESPONDENT
7 BEGINS TO PUTS ON EVIDENCE, THE RESPONDENT WOULD LIKE TO
8 MOVE AT THIS TIME FOR A DIRECTED VERDICT ON THE BASIS
9 THAT THERE IS NO EVIDENCE THAT RISES TO THE LEVEL OF MORE
10 LIKELY THAN NOT THAT THE RESPONDENT MEETS THE CRITERIA
11 FOR COMMITMENT UNDER 18 U.S.C. 4248, LET ALONE THE LEVEL
12 OF CLEAR AND CONVINCING EVIDENCE AS REQUIRED BY THAT
13 STATUTE.

14 THE RESPONDENT ALSO NOTES THAT THE ACTUARIALS
15 WHICH MANY OF THE EXPERTS CONSIDER THE STRONGEST EVIDENCE
16 WITH RESPECT TO THE RISK OF RECIDIVISM AND REOFFENDING DO
17 NOT EVEN SUPPORT A FINDING OF MORE LIKELY THAN NOT THAT
18 HE WILL REOFFEND.

19 THE COURT: THAT MOTION IS DENIED.

20 IS THERE ANY EVIDENCE FOR THE RESPONDENT?

21 MR. WATERS: YES, YOUR HONOR. THE RESPONDENT
22 CALLS ALLAN DUPREY, WHO IS NOT IN THE COURTROOM AT THIS
23 TIME.

24 MR. ROSS: WE'LL CALL ANDRE TAYLOR TO THE
25 STAND.

1 ANDRE TAYLOR, CALLED AS A WITNESS, HAVING
2 BEEN FIRST DULY SWORN, ON HIS OATH, TESTIFIED
3 AS FOLLOWS:

4 MR. BREDEBERG: YOUR HONOR, AT THIS POINT, WE
5 WOULD LIKE TO LODGE AN OBJECTION TO ANY TESTIMONY FROM
6 THIS WITNESS REGARDING ANY KIND OF OPINIONS. THE SAME AS
7 MR. GALLOP FROM YESTERDAY.

8 THE COURT: VERY GOOD. SO NOTED.

9 THE CLERK: SIR, COULD YOU STATE YOUR NAME FOR
10 THE RECORD.

11 THE WITNESS: ANDRE TAYLOR.

12 THE COURT: MR. WATERS? OR MR. ROSS?

13 MR. ROSS: YES, I HAVE HIM.

14 DIRECT EXAMINATION BY MR. ROSS:

15 Q MR. TAYLOR, WHERE DO YOU WORK?

16 A AT THE FEDERAL PRISON IN BUTNER, NORTH CAROLINA.

17 Q WHAT IS YOUR JOB TITLE?

18 A I AM A CORRECTION COUNSELOR.

19 Q HOW LONG HAVE YOU BEEN WORKING THERE?

20 A I HAVE BEEN AT BUTNER FOR 16 YEARS AND COUNSELLOR FOR
21 THE LAST THREE YEARS, SINCE 2008.

22 Q IN 2008 -- BEFORE 2008, WHAT WAS YOUR JOB?

23 A PRIOR TO 2008, I WAS AN ISM OFFICER WHICH IS INMATE
24 SYSTEM'S OFFICER, WHICH BASICALLY PROCESS AND OUTPROCESS
25 INMATES, PROCESS THE MAIL AND INMATE'S PROPERTY.

26 Q NOW, AS COUNSELLOR, WHAT ARE SOME OF YOUR JOB DUTIES?

1 A THEY DEAL WITH BASICALLY TRYING TO COUNSEL INMATES ON
2 GETTING JOB SKILLS, TALKING TO THE INMATES ON THE LEVEL
3 OF TRYING TO PROBLEM SOLVE, DOING PROGRESS REPORTS WHICH
4 IS THE CASE MANAGER, WE HAVE LIKE A UNIT TEAM AND WE GET
5 TOGETHER AND GET THE INMATE IN THERE AND GIVE THEM SOME
6 TYPE OF -- YOU KNOW, WHAT IS DOING GOOD AND WHAT HE IS
7 DOING BAD, AND WHAT HE NEEDS TO WORK ON.

8 ALSO, WE TRY TO GIVE THE INMATE SOME SORT OF
9 DIRECTION AS TO WHEN THEY GET OUT.

10 Q NOW, WHERE ARE YOU WORKING AT BUTNER PRESENTLY?

11 A I CURRENTLY WORK INSIDE OF THE MARYLAND HOUSING UNIT.
12 MY OFFICE IS INSIDE THE MARYLAND HOUSING UNIT.

13 Q ARE THERE OTHER UNITS NEXT TO THE MARYLAND HOUSING
14 UNIT?

15 A YES, SIR. I WORK -- THERE IS A DUKE UNIT, NORTH
16 CAROLINA UNIT AND THE MARYLAND ANNEX, AND IT'S CONNECTED
17 TO THE MARYLAND UNIT.

18 Q WE'LL GET BACK TO THE MARYLAND ANNEX AND THE MARYLAND
19 UNIT, BUT DO YOU KNOW WHAT GOES ON IN THE DUKE AND THE
20 CAROLINA FACILITIES?

21 A YES, SIR, BECAUSE I AM ALSO THE COUNSELLOR FOR THOSE
22 TWO WINGS AS WELL.

23 Q NOW, THE MARYLAND UNIT, WHAT -- WHO IS IN THE
24 MARYLAND UNIT?

25 A THOSE ARE THE ADAM WALSH OR CIVIL DETAINEE INMATES

1 CURRENTLY THAT IS HOUSED IN THE MARYLAND UNIT.

2 Q ARE THEY IN THE GENERAL POPULATION?

3 A NO, SIR.

4 Q WHAT IS DIFFERENT ABOUT THEIR HOUSING AND THE GENERAL
5 POPULATION?

6 A BASICALLY, GENERAL POPULATION, THEY ARE ON A 10
7 MINUTE MOVE, WHICH BASICALLY MEANS EVERY HALF HOUR ON THE
8 HOUR, THE INMATES HAVE TEN MINUTES TO MOVE FROM POINT "A"
9 TO POINT "B". THE MARYLAND UNIT INMATES ARE SECURED
10 ONLY IN THE UNIT. I MEAN, THEY CAN ROAM AROUND THE UNIT,
11 BUT THEY CAN'T GO OUTSIDE OF THE DOOR. THEY ARE
12 LOCKED -- IN OTHER WORDS, THEY ARE LOCKED INSIDE THE
13 UNIT.

14 Q LET'S TALK ABOUT THE MARYLAND UNIT FOR A WHILE?

15 MR. BREDENBERG: OBJECTION, YOUR HONOR. THIS
16 INFORMATION, FIRST OF ALL, ISN'T IN THE PRETRIAL ORDER.
17 WELL, FIRST OF ALL, IT'S NOT RELEVANT TO THE PROCEEDINGS
18 HERE AND WHETHER MR. ANTONE IS SEXUALLY DANGEROUS, BUT
19 ALSO THE INFORMATION IS PROPOSED TESTIMONY FOR MR. TAYLOR
20 IS SIMPLY INSTITUTIONAL CONDUCT OF THE RESPONDENT AND
21 WHERE HE LIVES WOULDN'T BE RELEVANT TO THAT ISSUE EITHER.

22 THE COURT: WELL, I AM OVERRULING THE
23 OBJECTION. THE PHYSICAL ARRANGEMENTS OF WHERE MR. ANTONE
24 IS HOUSED COULD CONCEIVABLY BE RELEVANT TO HIS
25 INSTITUTIONAL CONDUCT.

1 YOU MAY ANSWER THE QUESTION, SIR.

2 THE WITNESS: CAN YOU REPEAT THE QUESTION?

3 MR. ROSS: SURE.

4 Q LET'S TALK ABOUT THE MARYLAND UNIT AND HOW IT'S SET
5 UP. ARE THE INMATES IN CELLS? LET'S TALK ABOUT THAT,
6 HOW THAT IS SET UP?

7 A THEY ARE NOT IN CELLS. EACH INMATE HAS A ROOM AND
8 THERE IS PROBABLY -- THERE IS LIKE EIGHT ROOMS TO A POD
9 AND A POD IS LIKE FIVE PODS AND THERE IS EIGHT ROOMS TO A
10 POD. EACH POD IS SEPARATED BY A SLIDING DOOR.

11 THE ONLY TIME THE SLIDING DOOR COMES INTO EFFECT IS
12 AT 11:00 O'CLOCK WHEN THEY DO THE COUNT. THEN THE DOORS
13 ARE SECURED. THAT IS THE ONLY TIME THE INMATES ARE
14 SECURED BEHIND IN THAT PARTICULAR POD THAT THEY LIVE IN,
15 BUT THEIR DOORS TO THEIR ROOMS ARE NOT LOCKED.

16 Q SO DURING THE DAY, ARE THEY ABLE TO GO OUT WITH OPEN
17 POPULATION?

18 A NO, SIR.

19 Q WHEN YOU SAY SECURED, YOU MEAN DOORS ARE LOCKED AND
20 THEY ARE NOT ABLE TO GET OUTSIDE?

21 A RIGHT. EXACTLY.

22 Q NOW, DO YOU HAVE INTERACTION WITH THE INMATES ON THE
23 UNIT?

24 A YES, SIR, ON DAILY BASIS.

25 Q HOW MANY ARE ON THERE AT THE PRESENT?

1 A I THINK IT'S LIKE 69. MY LAST COUNT WAS LIKE 69 ON
2 THERE.

3 Q BEFORE WE STARTED HAVING THESE ADAM WALSH HEARINGS,
4 WHAT WAS THE NUMBER? WAS THE NUMBER HIGHER THAN 69 AT
5 SOME POINT?

6 A TO MY RECOLLECTION, I THINK THE HIGHEST NUMBER I CAN
7 REMEMBER WAS LIKE 84 OR 85.

8 Q NOW, DO YOU HAVE SOME RULES ASSOCIATED WITH CONDUCT
9 WITH INMATES IN THE MARYLAND UNIT?

10 A YES, SIR. BASICALLY THE SAME RULES APPLY TO THE ADAM
11 WALSH INMATES AS THEY APPLY TO THE GENERAL POPULATION.
12 WHERE THAT COMES INTO PLAY IS IF THEY VIOLATE SOME OF THE
13 SANCTIONS, OR SOME OF THE RULES, THEN THEY ARE HELD
14 ACCOUNTABLE FOR THOSE ACTS AND WE SANCTION THEM ACCORDING
15 TO THE ACTION -- TO THE ACTS THEY COMMITTED.

16 Q SO LET'S TALK ABOUT SOME OF THESE RULES. ARE THERE
17 RULES ABOUT ALCOHOL?

18 A YES, SIR. IT'S NOT ALLOWED.

19 Q NOT ALLOWED?

20 A NOT ALLOWED.

21 Q ARE THERE RULES ABOUT FIGHTING?

22 A YES, SIR. NOT ALLOWED, ALSO.

23 Q WHAT ABOUT DRUGS?

24 A DEFINITELY NOT ALLOWED.

25 Q WHAT ABOUT SEX?

1 A NO, SIR. NOT ALLOWED.

2 Q IN A PRISON SETTING, THE RULES THAT I JUST MENTIONED,
3 ALCOHOL, SEX, FIGHTING AND DRUGS, DO THEY SOMEHOW MAKE
4 THEIR WAY INTO THE PRISON SETTING?

5 A YES, SIR.

6 Q ALL RIGHT. LET'S TALK ABOUT ALCOHOL FIRST. IN THE
7 THREE YEARS THAT YOU HAVE BEEN AN OFFICER -- EXCUSE ME --
8 A COUNSELOR IN THE MARYLAND UNIT, HAVE YOU OBSERVED
9 ANYBODY WHO HAS BEEN WRITTEN UP FOR ALCOHOL?

10 A YES, SIR.

11 Q DO YOU KNOW HOW MANY TIMES OVER THE LAST THREE YEARS?

12 A NOT AN ACCURATE NUMBER, BUT I WOULD HAVE TO SAY AT
13 LEAST FIVE.

14 Q NOW, HOW DOES -- HOW DOES A COUNSELLOR OR HOW DOES AN
15 OFFICER DETECT SOMEONE HAS USED ALCOHOL?

16 A WELL, FOR ONE, THE ALCOHOL THAT THEY MAKE IN THE
17 PRISON HAS A VERY DISTINCT SMELL, AND THEN YOU CAN --
18 SOMEBODY MAY ACT OUT WHEN THEY ARE UNDER THE INFLUENCE OF
19 ALCOHOL. AND THEN WE HAVE THESE THINGS CALLED
20 ALCOSENSORS. YOU WALK AND YOU MIGHT, MAYBE AT A RANDOM,
21 GET 10 GUYS TO BLOW AN ALCOSENSOR, AND IF IT DON'T COME
22 UP ZERO, ZERO, ZERO, THEY DO SOME TESTS, AND THEN MORE
23 THAN LIKELY IT COMES BACK A POSITIVE READING FOR ALCOHOL.

24 Q IS THAT LIKE A BREATHALYZER THAT YOU ARE TALKING
25 ABOUT?

1 A YES, SIR.

2 Q NOW, IN THAT LOCKED UNIT OF MARYLAND, HAVE YOU FOUND
3 ALCOHOL?

4 A YES, SIR.

5 Q AND THIS IS -- HAVE YOU FOUND ALCOHOL EVEN RECENTLY
6 IN THE MARYLAND UNIT?

7 A YES, SIR.

8 Q WHAT ABOUT INTOXICATED INMATES? HAVE YOU SEEN THAT
9 WHILE YOU HAVE BEEN AT THE PRISON?

10 A I HAVE SEEN THEM INTOXICATED, YES, SIR.

11 Q HAVE YOU SMELLED ALCOHOL WHILE YOU HAVE BEEN THERE?

12 A YES, SIR.

13 Q SPECIFICALLY, AS TO MR. ANTONE, HAVE YOU SEEN HIM
14 WITH ANY ALCOHOL OR SMELLED ANY ALCOHOL ON HIS PERSON?

15 A NO, SIR.

16 Q NOW, ALSO WITH DRUGS, THAT IS SOMETHING THAT YOU WANT
17 TO MAKE SURE YOU KEEP OUT OF THE PRISON AS WELL?

18 A YES, SIR.

19 Q SEX IS ANOTHER THING THAT YOU WANT TO KEEP OUT OF THE
20 PRISON SETTING. AND THERE ARE VIOLATIONS IF PEOPLE ARE
21 CAUGHT WITH DRUGS OR SEX?

22 MR. BREDEBERG: OBJECTION, LEADING.

23 THE COURT: WELL, OVERRULED TO THIS POINT. I
24 HAVEN'T HEARD THE QUESTION YET.

25 MR. ROSS: YES, SIR.

1 Q WHEN PEOPLE ARE CAUGHT WITH COMMITTING THE OFFENSE OF
2 SEX, DRUGS, ALCOHOL, WHAT ARE THE SANCTIONS?

3 A WELL, DRUGS AND ALCOHOL IS THE U.D.C. WHICH IS THE
4 UNIT DISCIPLINARY COMMITTEE. WE CAN'T SANCTION INMATES
5 CAUGHT WITH DRUGS, ALCOHOL OR HAVING SEX. THAT ACTUALLY
6 GOES TO THE D.H.O. WHICH IS THE DISCIPLINARY HEARING
7 OFFICER BECAUSE HE HAS GREATER SANCTIONS THAT HE CAN
8 PLACE ON THE INMATE THAT THE UNIT TIME OR THE UNIT
9 DISCIPLINARY COMMITTEE CAN'T PLACE ON INMATES, AND THAT
10 COULD BE ANYWHERE FROM 30 DAYS IN THE SHU.

11 Q AND THE SHU IS --

12 A SPECIAL HOUSING UNIT, OR IN THE MARYLAND ANNEX WHICH
13 IS THE SAME AS THE SPECIAL HOUSING UNIT, OR HE CAN
14 RESTRICT THEM TO THE UNIT WHEREAS NOW THEY GET A CHANCE
15 TO GO OUTSIDE EVERY NOW AND AGAIN, BUT HE CAN ACTUALLY
16 RESTRICT THEM TO THE UNIT AND THEY WILL BE LOCKED IN THE
17 SHU.

18 Q NOW, YOU HAVE HAD AN OPPORTUNITY TO OBSERVE MR.
19 ANTONE OVER A FEW YEARS AT THIS POINT?

20 A YES, SIR.

21 Q HAVE YOU OBSERVED HIM WITH THE GUITAR?

22 A YES, SIR.

23 Q AND WHAT HAVE YOU OBSERVED HIM DO WITH THIS GUITAR?

24 A ACTUALLY, HE CAN -- I MEAN, HE PLAYS IT VERY WELL.
25 AND ACTUALLY, HE USUALLY SITS ON THE BACK OF THE YARD OR

1 THE COURTYARD, WE CALL IT, THE COURTYARD, AND HE JUST
2 SITS THERE AND PLAYS HIS GUITAR AND SINGS AT THE SAME
3 TIME. SO HE IS QUITE TALENTED WITH THE GUITAR.

4 Q HAVE YOU SEEN HIM TEACH OTHER FOLKS?

5 A I SEEN HIM TRYING TO TEACH OTHER PEOPLE HOW TO PLAY
6 THE GUITAR.

7 Q WHAT ABOUT HIS ART SKILLS? HAVE YOU SEEN ANY OF THAT
8 WHILE YOU HAVE BEEN AT PRISON?

9 A YES, SIR.

10 Q TELL US ABOUT THAT?

11 A WELL, I DO MY ROOM INSPECTIONS AND WHEN I GO THROUGH
12 THERE, HE HAS HIS PAINTINGS ON A TABLE, AND A LOT OF
13 TIMES I COMMENT ON HIS ART, AND I TELL HIM, YOU KNOW, YOU
14 COULD PROBABLY SEND THESE OUT TO SOME OF THE FAMILY
15 MEMBERS AND POSSIBLY HAVE THEM -- LIKE TAKE THEM TO A
16 SWAP MEET OR SOMETHING AND POSSIBLY GET SOME MONEY FOR
17 THEM, BECAUSE THEY ARE ACTUALLY PRETTY GOOD.

18 Q HAVE YOU SEEN SOME OF HIS JEWELRY OR THE BEADS THAT
19 HE HAS DONE?

20 A YES, SIR.

21 Q IS THERE A CLASS UP THERE FOR BEADING?

22 A YES, SIR. THEY HAVE BEADING CLASS AND I THINK IT'S
23 PROBABLY -- I THINK MAYBE FIVE OR SIX INMATES THAT
24 STARTED IN THAT BEADING CLASS.

25 Q NOW, YOU ALSO -- WHAT ABOUT JOBS THAT ARE UP IN THE

1 MARYLAND UNIT? WHO DECIDES WHO GETS WHAT?

2 A BASICALLY WHAT HAPPENS IS THE INMATE COMES TO ME, AND
3 BY ME BEING THE UNIT COUNSELOR, AND I HAVE PARTICULAR
4 JOBS, ESPECIALLY LIKE SANITATION, CLEAN THE SHOWERS,
5 BATHROOMS AND STUFF, AND SO THEY SEND ME A COP OUT OR
6 COME TALK TO ME AND SAY, I NEED A JOB. YOU KNOW, THEY
7 HAVE LIMITED FUNDS, AND SO IF I HAVE A JOB AVAILABLE, I
8 GIVE INMATES THE JOB.

9 Q WHAT ABOUT MR. ANTONE? WHAT IS HIS JOB?

10 A HE CURRENTLY IS ONE OF MY UNIT ORDERLIES. HE TAKES
11 CARE OF THE TRASH. HE TAKES CARE OF -- I HAVE LIKE FIVE
12 SEPARATE OFFICES THAT HE TAKES CARE, DO THE VACUUMING,
13 CLEAN UP THE OFFICES, WATER THE PLANTS, AND THEN
14 BASICALLY ANYTHING ELSE I ASK HIM TO DO FOR ME, THAT IF
15 SOMEBODY ELSE IS SLACKING OFF, HE WOULD DO IT FOR ME.

16 Q WHAT IS A WRITE UP CALLED?

17 A INCIDENT REPORT OR A SHOT.

18 Q HAVE YOU HAD TO WRITE UP SHOTS FOR OTHER INMATES?

19 A YES, SIR.

20 Q NOW, GETTING BACK TO THAT BREATHALYZER, HOW DOES THE
21 MARYLAND UNIT OR YOUR UNIT RECORD THAT INFORMATION?

22 A THERE IS ACTUALLY A LOG BOOK THAT IS IN THE OFFICER
23 STATION THAT THEY HAVE LIKE A RANDOM -- THEY MIGHT DO
24 FIVE OR TEN INMATES IN THE UNIT, AND THEY ACTUALLY RECORD
25 THEM IN THE LOG BOOK.

1 Q HAVE YOU HAD -- DO YOU KNOW OF ANY TIME IN WHICH MR.
2 ANTONE HAS TURNED UP POSITIVE FROM THAT LOG BOOK?

3 A I CAN'T SAY THAT I HAVE, SIR.

4 Q WHAT ABOUT HIS INTERACTION WITH THE INMATES? CAN YOU
5 DESCRIBE THAT? POSITIVE? NEGATIVE?

6 A I WOULD SAY HE HAS A POSITIVE RAPPORT WITH THE
7 MAJORITY OF THE INMATES IN THE UNIT. THEY HAVE THEIR OWN
8 PARTICULAR BREAK YARD, SO THEY GET IN THERE AND PLAY
9 FOOTBALL, FRISBEE, SO I WOULD SAY HE HAS A POSITIVE
10 REACTION TO ALL THE INMATES.

11 Q CAN YOU SAY THAT ABOUT ALL THE INMATES THAT ARE UP
12 THERE?

13 A I CAN'T SAY THAT ABOUT ALL OF THEM.

14 MR. ROSS: THANK YOU, MR. TAYLOR.

15 THE WITNESS: YES, SIR. YOU ARE WELCOME.

16 MR. BREDENBERG: NO QUESTIONS, YOUR HONOR.

17 THE COURT: VERY GOOD. SIR, YOU MAY STEP
18 DOWN. THANK YOU.

19 MR. BREDENBERG: YOUR HONOR, MAY MR. TAYLOR BE
20 RELEASED FROM THE SUBPOENA?

21 THE COURT: HE MAY BE. I ASSUME NO OBJECTION.

22 MR. ROSS: NO, OBJECTION.

23 THE COURT: THANK YOU, MR. TAYLOR.

24 MR. WATERS: THE RESPONDENT NOW CALLS ALLAN
25 DUPREY.

1 MR. BREDENBERG: YOUR HONOR, WE OBJECT TO THIS
2 WITNESS AS WELL. FIRST OF ALL, THERE IS NO INDICATION IN
3 THE PRETRIAL ORDER WHAT HIS TESTIMONY IS ABOUT. ALL
4 THERE IS IS AN AFFIDAVIT PROVIDED BY HIM. BUT CERTAINLY
5 THE AFFIDAVIT AND THE INFORMATION THEREIN DOESN'T APPEAR
6 TO HAVE ANY RELEVANCE TO THE ACTUAL ISSUES IN THIS CASE
7 AS TO WHETHER MR. ANTONE IS A SEXUALLY VIOLENT PERSON.

8 MR. WATERS: YOUR HONOR --

9 THE COURT: MR. WATERS.

10 MR. WATERS: MR. DUPREY WILL BE TESTIFYING AS
11 TO THE CIRCUMSTANCES INVOLVING HOW MR. ANTONE WENT FROM
12 TRIBAL DETENTION INTO FEDERAL DETENTION. IT'S RELEVANT
13 UNDER 18 U.S.C. 4248 BECAUSE ONLY PERSONS IN BOP CUSTODY
14 ARE LIABLE FOR DETENTION UNDER THE -- CERTIFICATION UNDER
15 THE ADAM WALSH ACT.

16 MR. DUPREY ALSO WILL BE TALKING ABOUT MR.
17 ANTONE'S ATTITUDES TOWARDS TREATMENT PROGRAMS EVEN AS FAR
18 BACK AS 1999.

19 MR. BREDENBERG: YOUR HONOR, WITH REGARD TO
20 THE FIRST POINT, WE HAVEN'T MADE NOTICE OF ANY CHALLENGES
21 TO THE JURISDICTION OF THIS COURT ON THIS ISSUE.

22 MR. WATERS: THERE IS NO CHALLENGE TO THE
23 JURISDICTION, YOUR HONOR. WE ARE SIMPLY DISCUSSING THE
24 CIRCUMSTANCES.

25 MR. BREDENBERG: AND SO THAT WOULD BE TO THE

1 POINT THAT FIRST ISSUE HAS NO RELEVANCE TO THIS
2 PROCEEDING WHATSOEVER, AND THE SECOND ISSUE ABOUT HIS
3 ATTITUDES TOWARDS TREATMENT HAVE NEVER BEEN DISCLOSED TO
4 THE GOVERNMENT EITHER.

5 MR. WATERS: YOUR HONOR, NOT ONLY IS THERE THE
6 AFFIDAVIT THAT WAS FILED WITH THE PRETRIAL ORDER, THERE
7 ARE LETTERS FROM MR. DUPREY CONCERNING MR. ANTONE IN THE
8 GOVERNMENT'S DISCOVERY, ONE OF WHICH HAS BEEN ACCEPTED
9 INTO EVIDENCE AS AN EXHIBIT WITHOUT OBJECTION BY THE
10 GOVERNMENT. THAT WOULD BE RESPONDENT'S EXHIBIT 7, I
11 BELIEVE, YOUR HONOR. EXCUSE ME. EXCUSE ME.
12 RESPONDENT'S EXHIBIT 6, YOUR HONOR. I AM SORRY.

13 THE COURT: I AM GOING TO ALLOW MR. DUPREY TO
14 TESTIFY AND RESERVING RULING ON THE GOVERNMENT'S
15 OBJECTION.

16 MR. BREDEBERG: THANK YOU, YOUR HONOR.

17 ALLAN DUPREY CALLED AS A WITNESS, HAVING BEEN
18 FIRST DULY SWORN, ON HIS OATH, TESTIFIED AS
FOLLOWS:

19 THE CLERK: PLEASE STATE YOUR NAME FOR THE
20 RECORD.

21 THE WITNESS: I AM SORRY. I DIDN'T HEAR YOU.

22 THE CLERK: PLEASE STATE YOUR NAME FOR THE
23 RECORD.

24 THE WITNESS: ALLAN DUPREY, A-L-L-A-N
25 D-U-P-R-E-Y.

1 DIRECT EXAMINATION BY MR. WATERS:

2 Q GOOD AFTERNOON, MR. DUPREY.

3 A GOOD AFTERNOON.

4 Q CAN YOU HEAR ME OKAY?

5 A I CAN.

6 Q DO YOU KNOW THE RESPONDENT, MR. ANTONE?

7 A I KNOW MR. ANTONE, YES.

8 Q HOW LONG HAVE YOU KNOWN HIM?

9 A I MET HIM INITIALLY, I BELIEVE, IN 1999. I HAD SOME
10 RATHER CONTINUOUS CONTACT WITH HIM FOR ABOUT THE NEXT
11 YEAR, AND I RECENTLY MET HIM AGAIN YESTERDAY.

12 Q IN WHAT CAPACITY DID YOU FIRST BECOME INVOLVED WITH
13 MR. ANTONE'S CASE?

14 A I WAS AT THE TIME LIVING WITH THE HEAD PSYCHOLOGIST
15 AT THE NATION, THE TRIBE, WHOSE NAME WAS DR. CORNELIA
16 JONES AND SHE MADE ME AWARE OF BYRON'S CIRCUMSTANCES IN
17 THAT HE HAD BEEN CONVICTED OF TEN MISDEMEANORS AND WAS
18 SERVING A TEN CONSECUTIVE ONE YEAR TERMS IN THE TRIBE'S
19 JAIL.

20 SHE ASKED ME TO GO AND TALK WITH HIM AND SEE IF I
21 COULD DO ANYTHING TO HELP HIM.

22 Q WHAT WAS YOUR PROFESSION AT THAT TIME?

23 A I WAS A PRACTICING ATTORNEY IN THE STATE OF ARIZONA.

24 Q SO YOU HOLD A LAW DEGREE?

25 A I DO.

1 Q DO YOU HOLD ANY OTHER ADVANCED DEGREES?

2 A I HAVE A MASTER'S DEGREE IN CLINICAL PSYCHOLOGY. I
3 PRACTICED FOR A COUPLE YEARS IN THAT FIELD, BUT I DIDN'T
4 LIKE IT, SO I WENT BACK TO LAW SCHOOL. BAD MISTAKE.

5 Q I FEEL YOUR PAIN. SO WERE YOU THEN ABLE TO MEET WITH
6 MR. ANTONE?

7 A I DID.

8 Q WHERE WAS THAT?

9 A IN THE JAIL, AT THE NATION CAPITAL IN SELLS, ON THE
10 TOHONO O'ODHAM RESERVATION.

11 Q CAN YOU DESCRIBE THE CONDITIONS THERE AT THE JAIL
12 WHERE HE WAS?

13 A THEY WERE APPALLING. I COULDN'T BELIEVE IT. I HAD
14 BEEN A LAWYER FOR A NUMBER OF YEARS. I HAD BEEN TO A
15 NUMBER OF JAILS AND FACILITIES ACROSS THE COUNTRY, AND
16 THIS WAS BY FAR THE WORST. THE CELLS WERE MAYBE 5 FOOT
17 BY 5 FOOT. IT OCCURRED TO ME THAT THERE COULDN'T
18 POSSIBLY BE ANY REHABILITATIVE SERVICES. SELLS IS 75
19 MILES FROM TUCSON, AND I WAS JUST APPALLED, AND SO I SET
20 OUT TO SEE IF I COULD HELP HIM SOMEHOW.

21 Q WHAT SORT OF HELP WERE YOU SEEKING TO GET FOR MR.
22 ANTONE?

23 A WELL, INITIALLY I TALKED WITH SOME OF THE TRIBAL
24 ATTORNEYS AND DISCOVERED, AS I IMPLIED EARLIER, THAT
25 THERE WASN'T A LOT OF REHABILITATIVE SERVICES AVAILABLE

1 FOR HIM, SO THEN I BEGAN TO TALK WITH SOME OF THE PEOPLE
2 IN THE FEDERAL SYSTEM, MOST NOTABLY SANDY HANSON, WHO WAS
3 THE UNITED STATES DISTRICT ATTORNEY FOR THE DISTRICT IN
4 TUCSON, AND BETWEEN HER AND ME, WE CAME UP WITH A PLAN TO
5 TRANSFER BYRON, ESSENTIALLY TRANSFER HIM TO FEDERAL
6 CUSTODY, SO THAT HE COULD GET ESPECIALLY SEXUAL OFFENDER
7 TREATMENT AT A FACILITY NAMED BUTNER, WHICH I WAS NOT
8 FAMILIAR WITH AT THE TIME, BUT HAVE SINCE BECOME A LITTLE
9 FAMILIAR WITH.

10 IN ORDER TO ACCOMPLISH THAT, SANDY WENT WAY OUT OF
11 HER WAY. FEDERAL PROSECUTORS IN ARIZONA ARE AS SWAMPED
12 TODAY WITH ILLEGAL IMMIGRATION AND ILLEGAL DRUG
13 TRAFFICKING AS THEY WERE BACK IN '99.

14 NONETHELESS, SHE WENT OUT OF HER WAY TO ACCEPT
15 JURISDICTION OF THE CASE. THE TRIBES ONLY HAVE
16 JURISDICTION OVER MISDEMEANORS, SO SHE HAD HIM INDICTED
17 FOR A FELONY. SHE DRAFTED A PLEA AGREEMENT. SHE DRAFTED
18 THE JUDGMENT THAT THE ORDER SIGNED, AND ULTIMATELY WE GOT
19 HIM TRANSFERRED TO FEDERAL CUSTODY ON A TEN YEAR TERM
20 WITH THE CONDITION THAT FIVE YEARS OF THOSE TEN YEARS
21 WERE TO BE SERVED AT BUTNER WHERE HE COULD RECEIVE A
22 PROGRAM THAT WE WERE TOLD WAS SPECIALLY DESIGNED FOR
23 NATIVE AMERICAN SEXUAL OFFENDERS, AND THAT WAS WHERE I
24 ANTICIPATED AND EXPECTED HE WAS GOING TO GO.

25 Q CAN YOU TURN TO GOVERNMENT EXHIBIT 12 IN THAT BINDER.

1 IT WILL BE IN THE FIRST SET OF NUMBERS?

2 A YES. I HAVE IT.

3 Q DO YOU RECOGNIZE THAT DOCUMENT?

4 A YES.

5 Q CAN YOU DESCRIBE IT?

6 A IT'S THE PLEA AGREEMENT THAT SANDY AND I WORKED OUT
7 FOR MR. ANTONE. AND IF I CAN FIND THE LAST PAGE, IT'S
8 SIGNED BY BYRON ON JUNE 18, 1999, AND BY ME ON -- IT
9 LOOKS LIKE JUNE 28, 1999.

10 Q AND THAT IS ON THE PAGES MARKED BOP_ANTO_1224 AND
11 1225, RESPECTIVELY?

12 A THAT'S CORRECT, YES.

13 Q AND YOU STATED THAT YOU HELPED NEGOTIATE THE TERMS OF
14 THIS AGREEMENT WITH THE ASSISTANT U.S. ATTORNEY?

15 A I DID.

16 Q DIRECTING YOUR ATTENTION TO THE BOTTOM OF THE SECOND
17 PAGE OF THE PLEA AGREEMENT, BOP-1217?

18 A YES, I HAVE IT.

19 Q THOSE LAST TWO SENTENCES?

20 A "THE DEFENDANT AGREES TO PARTICIPATE IN SEX OFFENDER
21 COUNSELING AND TREATMENT AND TO ABIDE BY SEX OFFENDER
22 CONDITIONS AS MORE SPECIFICALLY SET FORTH IN 12 OF THE
23 PLEA AGREEMENT, IF SO ORDERED BY THE COURT."

24 Q AND THE SENTENCE BEFORE THAT ACTUALLY?

25 A "THE PARTIES REQUEST THE COURT RECOMMEND THE

1 DEFENDANT BE PLACED IN FCI-BUTNER, NORTH CAROLINA, SEX
2 OFFENDER TREATMENT PROGRAM DURING HIS INCARCERATION."
3 (ENDS OF QUOTE.)

4 Q AGAIN, AND CAN YOU DESCRIBE AGAIN WHY YOU
5 PARTICULARLY SOUGHT FCI-BUTNER?

6 A WELL, I WAS AS I SAID EARLIER, I WAS UNAWARE OF WHAT
7 BUTNER EVEN WAS, BUT IN CONVERSATIONS WITH PEOPLE ON THE
8 NATION AT THE RESERVATION AND WITH SANDY PARTICULARLY, I
9 BECAME AWARE THAT BUTNER IS KNOWN THROUGH THE FEDERAL
10 SYSTEM FOR ITS NATIVE AMERICAN SEXUAL OFFENDER TREATMENT
11 PROGRAMS, AND WE THOUGHT THAT WOULD BE BEST FOR BYRON AND
12 HE AGREED AND THAT IS WHAT WE SOUGHT AND THAT WAS WHAT WE
13 GOT.

14 Q AND CAN YOU TURN TO EXHIBIT 11 IN THAT BINDER?

15 A I HAVE IT.

16 Q AND DO YOU RECOGNIZE THAT?

17 A YES, I DO. IT WAS SIGNED BY JUDGE -- (WITNESS
18 CRYING) -- JUDGE ROLL WAS KILLED IN TUCSON ON JANUARY 8
19 THIS YEAR, AND IT'S THE FIRST TIME I HAVE SEEN HIM NAME
20 SINCE THAT TIME. I AM SORRY.

21 MR. ROSS: YOUR HONOR, MAY I APPROACH THE
22 WITNESS? (BRINGING KLEENEX)

23 THE COURT: YOU MAY.

24 THE WITNESS: THANK YOU. HE WAS A GOOD MAN.

25 THE COURT: SO I UNDERSTAND.

1 A YES. THIS WAS AN ORDER SIGNED FEBRUARY 16, 2000 BY
2 JUDGE JOHN M. ROLL OF TUCSON COMMITTING MR. ANTONE TO A
3 SENTENCE TO RUN CONCURRENT WITH ALL OF HIS MISDEMEANOR
4 CHARGES.

5 Q SO WAS YOUR AND THE ASSISTANT U.S. ATTORNEY'S
6 UNDERSTANDING THAT THE FEDERAL GOVERNMENT WOULD TAKE OVER
7 JURISDICTION IN MR. ANTONE'S CASE?

8 A THAT'S CORRECT.

9 Q AND THAT HIS SENTENCE WOULD BE CONCURRENT? ANY
10 SENTENCED IMPOSED BY THE FEDERAL GOVERNMENT WOULD BE
11 CONCURRENT WITH THE SENTENCE HE WAS ALREADY SERVING BY
12 THE TRIBAL GOVERNMENT?

13 A THAT'S CORRECT.

14 Q AND TURNING BACK TO THE PLEA AGREEMENT FOR JUST A
15 MOMENT, EXHIBIT 12, WERE YOU ABLE TO DISCUSS THIS PLEA
16 AGREEMENT WITH MR. ANTONE?

17 A YES, EXTENSIVELY.

18 Q DID YOU GO OVER ALL THE TERMS WITH HIM?

19 A YES. I WAS CONCERNED THAT LIKE MANY LAY PEOPLE, HE
20 MIGHT NOT HAVE UNDERSTOOD SOME OF THE LEGAL LANGUAGE, SO
21 I LITERALLY READ IT TO HIM AND WE DISCUSSED IT AND I WAS
22 QUITE CERTAIN IN MY MIND THAT HE UNDERSTOOD WHAT WAS
23 HAPPENING. HE WAS GOING TO BE SHIPPED FROM HIS NATIVE
24 HOME TO THE FEDERAL SYSTEM, AND WE WEREN'T SURE WHERE
25 THAT WAS GOING TO BE, AND IT MIGHT BE AS FAR AWAY AS

1 NORTH CAROLINA, WHICH WOULD MAKE IT MORE DIFFICULT FOR
2 PARENTS AND FRIENDS AND EVERYBODY TO SEE HIM, BUT HE
3 UNDERSTOOD THAT AND HE AGREED IT AND HE SIGNED IT.

4 Q DID YOU DISCUSS WITH HIM THE SEX OFFENDER TREATMENT
5 PROGRAM?

6 A I DID I AM SURE, BUT IN SOME VERY GENERIC SENSE. I
7 DIDN'T KNOW MUCH ABOUT IT THEN AND I KNOW AS LITTLE ABOUT
8 IT NOW. I UNDERSTAND, AS A FORMER PSYCHOLOGIST, THAT SEX
9 OFFENDER TREATMENT IS GOING TO DEAL WITH ISSUES OF ANGER
10 AND MAYBE DRUGS, ET CETERA, BUT I DIDN'T HAVE SPECIFIC
11 KNOWLEDGE OF WHICH TO TALK TO HIM ABOUT AT THAT TIME.

12 Q DID YOU DISCUSS WITH HIM DRUG TREATMENT PROGRAMS?

13 A I DID.

14 Q AND WHAT WAS MR. ANTONE'S REACTION TO THE POSSIBILITY
15 OF ENTERING THESE PROGRAMS?

16 A HE WANTED -- HE INDICATED TO ME QUITE CLEARLY HE WAS
17 VERY INTERESTED IN GETTING REHABILITATION FOR WHAT HE
18 ACKNOWLEDGED WAS A DRUG AND ALCOHOL PROBLEM.

19 HE DIDN'T LIKE BLACKING OUT. HE WAS AWARE THAT HE
20 HAD BLACKED OUT AND TOLD ME THAT AS A FUNCTION OF THOSE
21 BLACKOUTS, A NUMBER OF THESE CHARGES HAD ARISEN AGAINST
22 HIM.

23 I DIDN'T REPRESENT HIM IN THE TRIBAL COURT AT ALL,
24 AND SO I REALLY HAD NO OPINION ABOUT THOSE THINGS, BUT HE
25 EXPRESSED REMORSE AND A DESIRE TO NOT DO THAT ANYMORE.

1 Q AND WHILE MR. ANTONE WAS -- I ASSUME HE WAS IN
2 CUSTODY?

3 A HE WAS IN CUSTODY ALL THE TIME I DEALT WITH HIM. HE
4 WAS IN CUSTODY.

5 Q DID YOU TAKE ANY STEPS TO TRY TO GET HIM ACCESS TO
6 TREATMENT?

7 A I DID. WHEN HE WAS ADDITIONALLY IN TUCSON AT OUR
8 LOCAL FEDERAL PRISON THERE, I BELIEVE I WROTE A LETTER TO
9 THE WARDEN BECAUSE WHILE HE WAS IN THE JAIL, AND I DIDN'T
10 REALIZE IT AT THE TIME, BUT THESE LAST COUPLE OF DAYS
11 MADE ME AWARE HOW LONG HE HAD BEEN IN JAIL BEFORE I HAD
12 EVEN GOTTEN INVOLVED, AND APPARENTLY IT WAS A COUPLE OF
13 YEARS.

14 AND I THINK THERE WAS A THERAPIST AT THE NATION'S
15 BEHAVIORAL HEALTH UNIT NAMED MAUREEN SOMEBODY WHO HAD
16 WORKED WITH BYRON WHILE HE WAS IN THE LOCAL JAIL, AND
17 AFTER HE WAS TRANSFERRED TO THE FEDS, SHE AND HE BOTH
18 WANTED TO CONTINUE THAT RELATIONSHIP.

19 AND SO WHEN I DISCOVERED IT WAS NOT BEING ALLOWED BY
20 THE LOCAL WARDEN OF THE FEDERAL PRISON IN TUCSON, I
21 BELIEVE I WROTE HIM A LETTER ASKING HIM TO ALLOW THAT
22 RELATIONSHIP TO CONTINUE.

23 Q AND DID YOU GET A RESPONSE?

24 A I DID. AND BASICALLY IT SAID, LOOK, WE HAVE OUR OWN
25 SHRINKS AND WE'LL DEAL WITH HIM THE WAY WE WANT AND WE

1 ARE NOT GOING TO LET A STRANGER COME IN HERE AND TELL US
2 HOW TO RUN OUR PRISON.

3 Q IF YOU COULD PLEASE TURN GOVERNMENT'S EXHIBIT 7,
4 PLEASE, MR. DUPREY?

5 A YES. I HAVE IT.

6 Q CAN YOU IDENTIFY THIS DOCUMENT?

7 A YES. THIS IS THE JUDGMENT ACTUALLY RENDERED BY JUDGE
8 ROLL IN THIS CASE.

9 Q AND DID THIS JUDGMENT CONFORM WITH THE TERMS IN THE
10 PLEA AGREEMENT THAT YOU HELPED NEGOTIATE?

11 A TO THE BEST OF MY RECOLLECTION, IT DID. I HAVEN'T
12 READ IT IN THE LAST FEW DAYS, BUT I AM QUITE SURE IT
13 ACCURATELY REFLECTED WHAT WE ALL WANTED AT THE TIME.

14 Q AND TURNING YOUR ATTENTION TO THE END OF THE THIRD
15 PARAGRAPH, FIRST PAGE, DID THE COURT CONFORM WITH YOUR OR
16 AGREE WITH YOUR RECOMMENDATION AS TO TREATMENT?

17 A YES. IT SAYS, (QUOTE) "THE COURT'S RECOMMENDS THE
18 DEFENDANT PARTICIPATE IN THE BUREAU OF PRISONS DRUG ABUSE
19 TREATMENT PROGRAM AND SEXUAL OFFENDER PROGRAM." (END OF
20 QUOTE.) THAT WAS EXACTLY WHAT WE WANTED.

21 Q SO, FOLLOWING THE ENTRY OF THIS JUDGMENT, MR. ANTONE
22 WAS SENTENCED TO A FEDERAL TERM. WAS IT YOUR
23 UNDERSTANDING AT THAT POINT THAT HE WOULD BE PLACED AT
24 BUTNER AND BE ABLE TO ENTER INTO SEX OFFENDER TREATMENT?

25 A THAT WAS MY UNDERSTANDING AT THE TIME.

1 Q DO YOU KNOW IF THAT ACTUALLY OCCURRED?

2 A IT DID NOT.

3 Q CAN YOU TELL ME HOW YOU FIRST DISCOVERED THIS?

4 A I BELIEVE I GOT A CALL FROM EITHER ANTONE HIMSELF OR
5 SOME MEMBER OF HIS FAMILY COMPLAINING THAT HE HAD BEEN
6 SENT TO A PLACE IN COLORADO, I THINK CALLED FLORENCE. I
7 DON'T KNOW WHAT FLORENCE WAS, BUT IT CLEARLY WASN'T
8 BUTNER, AND SO I BELIEVE I WROTE TO THE WARDEN THERE OR
9 PERHAPS JUST MADE A PHONE CALL THERE, BUT I INQUIRED AS
10 TO WHY HE WASN'T AT BUTNER GETTING THE FIVE-YEAR
11 TREATMENT PROGRAM WE THOUGHT WE HAD AGREED TO.

12 AND THE RESPONSE WAS THAT HE HAS A TEN YEAR TERM, WE
13 ARE NOT GOING TO WASTE FIVE YEARS ON SEX OFFENDER
14 TREATMENT INITIALLY. WE ARE GOING TO GIVE IT TO HIM LAST
15 SO THAT HE HAS THOSE MEMORIES AND THAT LEARNING FRESH IN
16 HIS MIND WHEN WE RELEASE HIM.

17 AND I THOUGHT, WELL, THAT IS RATIONAL, THAT MAKES
18 SENSE, SO I LET BYRON AND/OR HIS FAMILY KNOW THAT THE
19 FIRST YEARS ARE GOING TO BE KIND OF DRY. YOU ARE NOT
20 GOING TO GET A LOT OF TREATMENT. YOU ARE CERTAINLY NOT
21 GOING TO GET THE SPECIFIC SEXUAL OFFENDER, NATIVE
22 AMERICAN TREATMENT WE WANTED, BUT YOU WILL GET IT FOR
23 YOUR LAST FIVE YEARS.

24 Q I ASK YOU TO TURN ONE MORE TIME IN THE BOOK TO
25 RESPONDENT'S EXHIBIT 6. IT WILL BE IN THE SECOND SET OF

1 TABS.

2 A YES. I HAVE IT.

3 Q DO YOU RECOGNIZE THAT?

4 A YES. THIS IS THE LETTER I JUST REFERRED TO. I WROTE
5 TO APPARENTLY A MS. BOSTICK, B-O-S-T-I-C-K, AT THE UNITED
6 STATES PENITENTIARY IN FLORENCE, COLORADO, AND BASICALLY
7 I WAS COMPLAINING THAT HE WASN'T GETTING THE TREATMENT WE
8 THOUGHT HE WAS GOING TO GET, HE BEING BYRON, OF COURSE,
9 AND WE BEING SANDY HANSON, THE JUDGE WHO ORDERED IT, AND
10 ME.

11 AND THEREAFTER, I GOT THE RESPONSE I HAD PREVIOUSLY
12 INDICATED THAT IT WAS GOING TO BE THE LAST FIVE YEARS OF
13 HIS TERM THAT HE WOULD GET THIS TREATMENT.

14 Q SO EVEN AT THIS POINT WERE YOU -- DID YOU BELIEVE
15 THAT YOU HAD AN AGREEMENT WITH THE FEDERAL GOVERNMENT
16 CONCERNING --

17 A I KNEW WE HAD THE AGREEMENT. IT WAS WRITTEN AND
18 SIGNED BY A UNITED STATES FEDERAL JUDGE. WE HAD AN
19 AGREEMENT.

20 Q DID YOU BELIEVE THAT MR. ANTONE WOULD BE ALLOWED TO
21 ACCESS SEXUAL OFFENDER TREATMENT PROGRAMS?

22 A ABSOLUTELY. I WOULD NOT HAVE DONE THIS WITHOUT IT.
23 THE ONLY REASON I GOT INVOLVED TO GET HIM OUT OF THE
24 TOHONO O'ODHAM NATION JAIL WAS BECAUSE THERE WAS NOTHING
25 THERE FOR HIM. THIS WAS THE ONLY OTHER OPTION. THIS WAS

1 THE SINE QUA NON OF THE DEAL. WITHOUT SEXUAL OFFENDER
2 TREATMENT, HE WOULD HAVE STAYED IN SELLS, BUT AT LEAST HE
3 WOULD HAVE HAD ACCESS TO HIS FAMILY AND TO HIS FRIENDS ON
4 A DAILY BASIS. WHEN HE IS 3,000 MILES AWAY IN BUTNER OR
5 1,000 MILES AWAY IN FLORENCE, NEITHER OF THOSE THINGS ARE
6 POSSIBLE. THIS WAS THE DEAL.

7 Q SO DO YOU BELIEVE THAT THE FEDERAL GOVERNMENT LIVED
8 UP TO ITS END OF THE DEAL?

9 A I DON'T KNOW WHAT THEY DID, BUT IF HE IS NOT GETTING
10 THE TREATMENT AND HASN'T GOTTEN THE TREATMENT, I DO NOT
11 BELIEVE THEY HAVE LIVED UP TO THE DEAL.

12 MR. WATERS: NOTHING FURTHER, YOUR HONOR.

13 THE COURT: MR. BREDENBERG.

14 MR. BREDENBERG: THANK YOU.

15 CROSS EXAMINATION BY MR. BREDENBERG:

16 Q MR. DUPREY, IS IT YOUR TESTIMONY THAT --

17 A I AM SORRY, SIR. I SHOULD HAVE TOLD YOU I AM REALLY
18 HARD OF HEARING. IF YOU WOULD SPEAK UP A LITTLE, I WOULD
19 REALLY APPRECIATE IT.

20 Q THAT IS FINE.

21 A I LEFT TUCSON IN SUCH A HURRY, I FORGOT MY EAR
22 PIECES.

23 Q CAN YOU HEAR ME NOW?

24 A YES.

25 Q IS IT YOUR TESTIMONY THAT YOU PLED MR. ANTONE FROM A

1 MISDEMEANOR TO A FELONY?

2 A YES. THAT IS VERY UNUSUAL. I HAVE NEVER DONE THAT
3 BEFORE OR SINCE IN MY CAREER.

4 Q AND THE REASON YOU DID THAT WAS BECAUSE YOU WANTED
5 HIM TO GET SEX OFFENDER AND DRUG TREATMENT?

6 A CORRECT.

7 Q IS THAT BECAUSE YOU KNEW THAT HE NEEDED IT?

8 A I BELIEVED HE NEEDED IT. HE BELIEVED HE NEEDED IT.
9 AND MY CONVERSATION WITH DR. JONES AND WITH MAUREEN, HIS
10 THERAPIST, ALL INDICATED THE SAME.

11 Q AND WHAT RESEARCH DID YOU SPECIFICALLY DO YOURSELF TO
12 CONFIRM THAT THERE WAS A SPECIALIZED NATIVE AMERICAN SEX
13 OFFENDER TREATMENT PROGRAM AT BUTNER?

14 A I TALKED TO SANDY. I TALKED TO THE PEOPLE ON THE
15 RES, AND I CALLED BUTNER. I DON'T RECALL WHEN AND I
16 DON'T HAVE PHONE CALLS FROM 11 YEARS AGO, BUT I FAIRLY
17 ASSURED MYSELF THAT THERE WAS SUCH A THING. I WASN'T
18 HALLUCINATING THAT, YOU KNOW, THERE WAS SOMETHING OUT
19 THERE THAT WAS DESIGNED FOR HIM AND SHOULD BE GIVEN TO
20 HIM, AND THAT IS WHAT WE STROVE TO GET.

21 Q ARE YOU SUGGESTING THAT SOMEONE AT BUTNER TOLD YOU
22 THAT THERE WAS A SPECIALIZED NATIVE AMERICAN TREATMENT
23 PROGRAM AT BUTNER?

24 A ELEVEN YEARS AGO, I CAN'T RECALL. I HONESTLY CAN'T
25 RECALL SPECIFICALLY WHAT BUTNER TOLD ME, SO I CAN'T.

1 Q WAS THERE SOME POINT IN TIME THAT YOU FOUND OUT THAT
2 THERE WAS NO SUCH THING AS A SPECIALIZED NATIVE AMERICAN
3 SEX OFFENDER TREATMENT PROGRAM?

4 A I DIDN'T FIND THAT OUT UNTIL A NUMBER OF MONTHS AGO
5 WHEN JOE AND HIS ASSOCIATES SHOWED UP AT MY HOUSE IN
6 TUCSON, ARIZONA.

7 Q AND HAVE YOU SPOKEN WITH THE DEFENDANT SINCE HIS
8 CERTIFICATION?

9 A ONLY TO SAY HELLO YESTERDAY.

10 Q ARE YOU AWARE THAT HE HAS HAD SEX OFFENDER TREATMENT
11 AVAILABLE TO HIM AT BUTNER SINCE HE WAS CERTIFIED IN
12 FEBRUARY OF '07?

13 A I AM NOT AWARE OF THAT.

14 Q DO YOU HAVE A COPY OF THE LETTER FROM THE BUREAU OF
15 PRISONS THAT SAYS, AND I AM QUOTING YOU, "WE DON'T WANT
16 TO WASTE FIVE YEARS OF HIS LIFE PROVIDING HIM WITH
17 TREATMENT THAT IS NOT GOING TO WORK."?

18 A THAT IS NOT WHAT I SAID, AND IF THAT IS WHAT YOU
19 INFERRED, LET ME CORRECT THAT. IT WOULDN'T HAVE BEEN
20 WASTED FIVE YEARS, IT WAS JUST I THOUGHT THE POINT THEY
21 WERE MAKING WAS WE WANT THIS INFORMATION TO BE FRESH IN
22 HIS MIND, SO THE FIRST FIVE YEARS I TOLD HIM WERE GOING
23 TO BE COLD YEARS, YOU ARE NOT GOING GET A LOT OF HELP IN
24 THIS AREA, BUT THE LAST FIVE IS WHERE YOU ARE GOING TO
25 GET THE FOCUS SO THAT WHEN YOU LEAVE, YOU WILL HAVE THAT

1 INFORMATION FRESH IN YOUR MIND. THAT IS WHAT I MEANT.

2 IF I MISSTATED THAT, I APOLOGIZE.

3 Q WELL, FORGET ABOUT THE SUBSTANCE OF THE LETTER, BUT
4 DO YOU HAVE COPIES OF THE LETTERS YOU RECEIVED BACK FROM
5 THE BUREAU OF PRISONS ANSWERING YOUR QUESTIONS?

6 A NO, I NEVER GOT A LETTER BACK. I DIDN'T WRITE
7 A LETTER TO BUTNER. I WROTE A LETTER TO FLORENCE.

8 Q WHAT ABOUT THE FIRST ONE THAT YOU SAID YOU GOT A --

9 A I AM SORRY. I CAN'T HEAR YOU.

10 Q WHAT ABOUT THE FIRST TIME WHEN YOU CONTACTED THE
11 BUREAU OF PRISONS AND YOU SAID YOU GOT A RESPONSE BACK?

12 A IN TUCSON, YES.

13 Q DO YOU HAVE A COPY OF THAT LETTER?

14 A I BELIEVE -- I DON'T KNOW. IF IT'S NOT IN
15 DISCLOSURE, THAN I DON'T HAVE IT.

16 MR. BREDEBERG: NO FURTHER QUESTIONS, YOUR
17 HONOR.

18 THE COURT: MR. WATERS, ANYTHING FURTHER?

19 MR. WATERS: JUST A FEW QUESTIONS, YOUR HONOR.

20 REDIRECT EXAMINATION BY MR. WATERS:

21 Q MR. DUPREY, WAS IT YOUR UNDERSTANDING AFTER
22 DISCUSSING THESE MATTERS WITH THE WARDEN AT FCI- --
23 EXCUSE ME -- AT U.S.P. FLORENCE THAT MR. ANTONE WOULD BE
24 GIVEN ACCESS TO SEX OFFENDER TREATMENT BEFORE THE END OF
25 HIS BOP SENTENCE?

1 A YES.

2 Q AND TO THE BEST OF YOUR KNOWLEDGE, DID HE RECEIVE
3 SUCH OPPORTUNITY BEFORE?

4 A NO, HE DID NOT.

5 MR. WATERS: NOTHING FURTHER, YOUR HONOR.

6 THE COURT: ANY FOLLOW UP, MR. BREDENBERG?

7 MR. BREDENBERG: NOTHING, YOUR HONOR.

8 THE COURT: MR. DUPREY, YOU MAY STEP DOWN.

9 THE WITNESS: MAY I BE EXCUSED, YOUR HONOR?

10 THE COURT: ANY OBJECTION?

11 MR. ROSS: YES. I HAVE NO OBJECTION TO HIM
12 BEING RELEASED.

13 MR. BREDENBERG: I HAVE NO OBJECTION.

14 THE COURT: YOU ARE EXCUSED FROM YOUR
15 SUBPOENA, SIR.

16 THE WITNESS: THANK YOU.

17 THE COURT: SAFE TRAVELS.

18 THE WITNESS: THANK YOU, SIR.

19 MR. BREDENBERG: YOUR HONOR, FOR THE RECORD,
20 WE WOULD RENEW OUR OBJECTION BECAUSE IT APPEARS BASED ON
21 THE TESTIMONY THAT THERE IS STILL NO RELEVANCE TO THE
22 ISSUE PRESENTED IN THIS CASE.

23 THE COURT: THAT IS FINE.

24 MR. BREDENBERG: THANK YOU.

25 THE COURT: DULY NOTED. ANY OTHER WITNESSES

1 FOR THE RESPONDENT?

2 MS. ALLEN: YES, YOUR HONOR. AT THIS TIME THE
3 RESPONDENT WOULD CALL ANNE SCHAUDER TO THE STAND.

4 MR. ROYSTER: JUDGE, IF WE MIGHT BE HEARD. WE
5 OBJECT TO THE TESTIMONY OF THIS WITNESS AS WELL. IT'S
6 OUR UNDERSTANDING SHE IS GOING TO TESTIFY REGARDING HER
7 EXPERIENCE SUPERVISING NATIVE AMERICANS AS A UNITED
8 STATES PROBATION OFFICER, SO OUR OBJECTION WOULD BE THAT
9 IT'S NOT RELEVANT, AND I WOULD CITE TO THE COURT THIS
10 COURT'S RULINGS IN THE COMSTOCK CASE, CITING GLAUCHAY AND
11 WISEMAN, THAT A PRESCRIBED REGIMEN OF TREATMENT OR CARE
12 AFTER RELEASE IS NOT RELEVANT WITH RESPECT TO THE
13 PROCEEDINGS.

14 IT'S OUR BELIEF THAT THAT WOULD ALSO
15 ENCAPSULATE OR INCLUDE TESTIMONY ABOUT WHAT IT MAY BE
16 LIKE, HIM BEING SUPERVISED ON SUPERVISED RELEASE.

17 THE COURT: MS. ALLEN?

18 MS. ALLEN: YOUR HONOR, IN RESPONSE TO THAT,
19 WE WOULD OFFER MS. SCHAUDER TO INFORM THE COURT AS TO
20 WHAT SHE DOES AS A U.S. PROBATION OFFICER IN THE STATE OF
21 ARIZONA WHERE MR. ANTONE HAS FIVE YEARS OF SUPERVISED
22 RELEASE.

23 THE MATTER OF TREATMENT AND WHAT IS AVAILABLE
24 IN A STRUCTURED ENVIRONMENT VERSUS A CONTAINED
25 ENVIRONMENT VERSUS WHAT HE CAN GET IN OR OUT HAS BEEN AT

1 ISSUE ALL DAY YESTERDAY AND TODAY.

2 MS. SCHAUDER CAN SPEAK DIRECTLY TO THAT. SHE
3 CAN ALSO SPEAK TO WHAT STEPS HAVE BEEN TAKEN IN THIS
4 PARTICULAR CASE AS FAR AS MR. ANTONE WITH REGARD TO
5 CONDITIONS OF HIS SUPERVISED RELEASE UPON HIS RELEASE
6 FROM PRISON.

7 WE BELIEVE THAT IS HIGHLY RELEVANT TO THIS
8 MATTER AND THAT IT WOULD INFORM THE COURT IN A POSITIVE
9 MATTER.

10 THE COURT: I WILL ALLOW MS. SCHAUDER TO
11 TESTIFY. I AM RESERVING RULING ON THE OBJECTION BY THE
12 GOVERNMENT.

13 YOU MAY TAKE THE STAND, MA'AM.

14 ANNE SCHAUDER, CALLED AS A WITNESS, HAVING
15 BEEN FIRST DULY SWORN, ON HER OATH, TESTIFIED
16 AS FOLLOWS:

16 THE CLERK: PLEASE HAVE A SEAT.

17 DIRECT EXAMINATION BY MS. ALLEN:

18 Q MS. SCHAUDER, IF YOU WOULD STATE YOUR FULL NAME AND
19 SPELL IT FOR THE RECORD.

20 A ANNE SCHAUDER, S-C-H-A-U-D-E-R. ANNE IS A-N-N-E.

21 Q MS. SCHAUDER, WHAT DO YOU DO FOR A LIVING?

22 A A UNITED STATES PROBATION OFFICER.

23 Q WHERE ARE YOU A PROBATION OFFICER?

24 A FLAGSTAFF, ARIZONA.

25 Q HOW LONG HAVE YOU BEEN A PROBATION OFFICER IN

1 ARIZONA?

2 A IN ARIZONA FOR EIGHT YEARS. FOR THE DISTRICT OF
3 ARIZONA, FIVE YEARS.

4 Q AND AS A PROBATION OFFICER IN ARIZONA, WHAT ARE SOME
5 OF YOUR DUTIES?

6 A BASICALLY A LIAISON TO THE COURT. I SUPERVISE
7 INDIVIDUALS WHO HAVE BEEN RELEASED INTO THE COMMUNITY
8 EITHER DIRECTLY FROM COURT OR FROM BOP, AND ATTEMPT TO
9 ENFORCE THE CONDITIONS AS ORDERED BY THE COURT AND REPORT
10 BACK COMPLIANCE OR NON-COMPLIANCE OF THOSE CONDITIONS TO
11 THE COURT.

12 Q AND WITH REGARD TO SUPERVISING, HOW MANY PEOPLE WOULD
13 YOU SAY YOU SUPERVISE ON A DAILY BASIS?

14 A BETWEEN 50 AND 55.

15 Q AND OF THOSE PEOPLE THAT YOU SUPERVISE, ARE THOSE
16 FOLKS SERVING A TERM OF SUPERVISED RELEASE FROM PRISON?

17 A SOME OF THEM, YES.

18 Q NOT ALL OF THEM?

19 A NO. SOME ARE PROBATION.

20 Q OF THE ONES THAT YOU SUPERVISE, ARE ANY OF THOSE
21 NATIVE AMERICANS?

22 A YES.

23 Q WHAT PERCENTAGE OF THE PEOPLE YOU SUPERVISE WOULD YOU
24 SAY ARE NATIVE AMERICAN?

25 A I CAN'T GIVE YOU A PERCENTAGE. I AM NOT INTO MATH.

1 THE MAJORITY OF MY CLIENTELE ARE NATIVE AMERICANS.

2 Q AND OF THE CLIENTELE THAT YOU SERVE, WHAT PERCENT OF
3 THEM LIVE ON A FEDERAL RESERVATION?

4 A AGAIN, THE MAJORITY OF THE NATIVE AMERICANS I
5 SUPERVISE ARE ACTUALLY ON THE RESERVATION.

6 Q WOULD YOU SAY THAT YOUR SUPERVISION OF THE PEOPLE ON
7 THE RESERVATION HAS ANY -- LET ME STRIKE THAT. WHAT ARE
8 SOME OF THE -- DO YOU SUPERVISE ANY SEX OFFENDERS?

9 A I DO.

10 Q DO YOU SUPERVISE ANY SEX OFFENDERS WHO ARE ACTUALLY
11 RESIDING ON A RESERVATION?

12 A I DO.

13 Q IN THE STATE OF ARIZONA, DO SEX OFFENDERS HAVE
14 SPECIAL SUPERVISED RELEASE CONDITIONS?

15 A THEY DO.

16 Q ARE THOSE STANDARDIZED CONDITIONS THROUGHOUT THE
17 STATE OF ARIZONA?

18 A FOR THE DISTRICT OF ARIZONA, YES.

19 Q WHAT ARE SOME OF THOSE CONDITIONS THAT ARE SPECIFIC
20 TO SEX OFFENDERS?

21 A SOME OF THE CONDITIONS ARE SEX OFFENDER TREATMENT,
22 REGISTRATION WITHIN THE STATE AS WELL AS TRIBE. NO
23 CONTACT WITH MINORS. MENTAL HEALTH TREATMENT IS
24 TYPICALLY IN THERE AS WELL. NO VICTIM CONTACT IS A
25 PRETTY MAJOR CONDITION. WE UTILIZE SEARCH IN ARIZONA.

1 WE ARE ABLE TO HAVE WARRANTLESS SEARCHES AND WHICH
2 INCLUDES ELECTRONIC DEVICES, AND THE MORE TECHNOLOGICAL
3 THINGS THAT WEREN'T NECESSARILY AROUND WHEN MR. ANTONE
4 WAS CONVICTED, BUT NOW THEY ARE INCLUDED IN THOSE
5 CONDITIONS.

6 Q WHAT KINDS OF ELECTRONIC DEVICES DO YOU USE?

7 A CELLULAR PHONES, COMPUTERS, INTERNET SERVICE
8 PROVIDERS, THINGS OF THAT NATURE. WE HAVE ACCESS TO
9 SEARCH.

10 Q WHAT KIND OF -- IS THERE ANY-- WHAT KIND OF
11 MONITORING DEVICES DO YOU USE WITH YOUR SEX OFFENDERS?

12 A AS FAR AS ACTUAL DEVICES, WHAT WE HAVE AVAILABLE TO
13 US ARE G.P. S. SYSTEMS, THE ELECTRONIC MONITORING
14 BRACELET OF WHETHER OR NOT SOMEONE COMES IN AND OUT OF
15 THEIR RESIDENCE AS DIRECTED.

16 OUR, AS PROBATION, OUR ACCESS TO SOME OF THESE ARE
17 NOT QUITE AS EXTENSIVE AS SOME OF THE HALFWAY HOUSES THAT
18 WE UTILIZE THAT IS PART OF THEIR PROGRAM, BUT NOT
19 NECESSARILY OURS.

20 Q OKAY. YOU TALKED ABOUT HALFWAY HOUSES THAT UTILIZE.
21 IS THAT A TYPICAL OPTION FOR PEOPLE THAT YOU SUPERVISE?

22 A YES.

23 Q AND WHAT DOES THAT ENTAIL AS FAR AS STRUCTURE?

24 A IT GIVES A LOT OF STRUCTURE, ESPECIALLY VERSUS
25 RESERVATION LIFESTYLE. THE HALFWAY HOUSES ARE LOCATED IN

1 A METROPOLITAN AREA, WHICH VERSUS A RESERVATION, THERE IS
2 EMPLOYMENT AVAILABLE. THEY ACTUALLY HAVE TO FOLLOW
3 ITINERARIES.

4 TYPICALLY WHEN THEY LEAVE THE HALFWAY HOUSE, THEY
5 ARE -- THEY HAVE THE ABILITY TO SPEAK WITH CASE MANAGERS
6 AT THE HALFWAY HOUSE WHICH LEADS TO THE STRUCTURE OF WHAT
7 THEY CAN AND CAN'T DO OR THE DIRECTION IN WHICH THEY MAY
8 WANT TO GO AS FAR AS A VOCATION OR CERTAIN TYPES OF
9 TREATMENT THAT THEY MAY WANT TO ENTER INTO THAT MAY NOT
10 HAVE BEEN ORDERED BY THE COURT.

11 SO IT PROVIDES A LOT OF DIFFERENT FACETS TO THE
12 OFFENDER.

13 Q YOU TALKED ABOUT SOME OF THE STANDARD SEX OFFENDER
14 CONDITIONS, AND AT THAT TIME YOU MENTIONED THAT
15 TREATMENT -- SEX OFFENDER TREATMENT WAS USUALLY ONE OF
16 THOSE CONDITIONS; IS THAT RIGHT?

17 A YES.

18 Q NOW, THAT IS A MANDATORY CONDITION; IS THAT RIGHT?

19 A NO, I WOULDN'T SAY IT'S A MANDATORY CONDITION,
20 HOWEVER, WITH THE MAJORITY OF SEX OFFENDERS, IT IS
21 RECOMMENDED BY THE PROBATION DEPARTMENT AT PRESENTENCE,
22 THE PRESENTENCE PHASE, AND IT IS TYPICALLY ORDERED BY THE
23 COURT.

24 Q AND IF IT'S ORDERED BY THE COURT, YOU, THE PROBATION
25 OFFICER, WOULD EXPECT YOUR CLIENT TO ABIDE BY THAT?

1 A ABSOLUTELY.

2 Q AND IN THE EVENT THAT YOUR CLIENT DID NOT COMPLY WITH
3 CONDITIONS ORDERED BY A JUDGE, WHAT WOULD HAPPEN?

4 A WE WOULD SUBMIT A PETITION TO THE COURT AND A REPORT
5 REQUESTING THE OFFENDER'S RETURN TO THE COURT TO ADDRESS
6 THE NON-COMPLIANCE.

7 Q WHAT ARE SOME OF THE WAYS THAT YOU DETERMINE WHETHER
8 SOMEONE IS COMPLYING WITH WHAT THE JUDGE HAS ORDERED?

9 A FOR THE MOST PART, IT'S A BLACK AND WHITE ISSUE. IF
10 THEY GET KICKED OUT OF THE HALFWAY HOUSE FOR HALFWAY
11 HOUSE INFRACTIONS, SAY DRUGS OR ALCOHOL OR NOT FOLLOWING
12 THEIR ITINERARY, THAT IS A PRETTY DEFINITE VIOLATION THAT
13 WE WOULD BRING THEM BACK TO COURT FOR.

14 IF THEY FAIL TO ATTEND TREATMENT AS THEY ARE
15 DIRECTED, WHICHEVER TREATMENT THAT MAY BE, WE WOULD BRING
16 THEM BACK TO THE COURT TO HAVE THEM ANSWER TO THE COURT,
17 TO THE JUDGE.

18 Q WHAT IF IT'S A SITUATION WHERE YOU THINK MAYBE
19 SOMEONE MIGHT -- SAY IT'S A SEX OFFENDER, AND AS A
20 PROBATION OFFICER YOU HAVE SOME SUSPICION THAT PERHAPS
21 THEY MAY BE THINKING ABOUT REOFFENDING.

22 DO YOU HAVE ANY METHODS THAT YOU USE TO EXPLORE
23 THAT?

24 A TO A DEGREE, WE DO. THINGS ARE A LITTLE DIFFERENT IN
25 THE DISTRICT OF ARIZONA. WE ARE PART OF THE NINTH

1 CIRCUIT, SO AS FAR AS QUESTIONS REGARDING -- THAT WOULD
2 BE CONTAINED WITHIN A POLYGRAPH. WE DO NOT NECESSARILY
3 ASK THE QUESTION OF REOFFENSE. HOWEVER, WE DO ASK
4 QUESTIONS SPECIFICALLY RELEVANT TO THE CONDITIONS OF
5 PROBATION, HAS THERE BEEN CONSUMPTION OF ALCOHOL, HAVE
6 YOU VIEWED PORNOGRAPHY, THINGS OF THAT NATURE THAT WE TRY
7 TO EXPLORE.

8 Q SO DO YOU, IN FACT, USE A POLYGRAPH IF YOU THINK YOU
9 NEED TO?

10 A WE USE POLYGRAPHS EVERY SIX MONTHS, AND IF THERE IS A
11 NEED, EVERY QUARTER.

12 Q ARE THERE ANY OTHER ELECTRONIC TESTS THAT YOU USE?

13 A AVAILABLE TO US, WE HAVE THE PLETHYSMOGRAPH.

14 Q THE PLETHYSMOGRAPH?

15 A YES.

16 Q CAN YOU TELL US WHAT THAT IS?

17 A THE PENILE PLETHYSMOGRAPH IS AN ELECTRONIC DEVICE --
18 I HAVE NEVER ACTUALLY SEEN ONE, BUT FROM WHAT I AM TOLD,
19 THERE IS A MERCURY DEVICE THAT IS CONNECTED TO THE
20 OFFENDER'S PENIS WHEREIN THEY ARE THEN SHOWN PICTURES, I
21 BELIEVE, OR SCENARIOS, AND IF THEY ARE PHYSICALLY --
22 PHYSIOLOGICALLY AROUSED TO THAT PHOTO, THE ELECTRONIC
23 DEVICE PICKS UP ON THAT AND IS ABLE TO READ THAT AROUSAL.

24 Q IS THAT SOMETHING THAT IS USED ON A SCHEDULE OR WOULD
25 THAT BE A CASE BY CASE BASIS?

1 A IT'S A CASE BY CASE BASIS.

2 Q BACK TO THE SUBJECT OF TREATMENT, WE TALKED A LITTLE
3 ABOUT SEX OFFENDER TREATMENT. HOW IS THAT PROVIDED TO --
4 AS A PROBATION OFFICER, DOES YOUR OFFICE PLAY A ROLE IN
5 ASSISTING SOMEONE LIKE MR. ANTONE UPON RELEASE AND
6 GETTING SEX OFFENDER TREATMENT?

7 A ABSOLUTELY. WE MAKE THE REFERRALS TO THE TREATMENT
8 PROVIDER.

9 Q AND IS THERE -- DO YOU PERSONALLY KNOW OF THE
10 TREATMENT PROVIDER IN YOUR AREA?

11 A IN MY AREA, YES.

12 Q IS THERE MORE THAN ONE?

13 A IN MY AREA?

14 Q OR IN THE STATE OF ARIZONA?

15 A IN THE STATE OF ARIZONA, THERE IS MORE THAN ONE, YES.

16 Q AND SO WOULD SOMEONE WHO IS TYPICALLY IN A SEX
17 OFFENDER PROGRAM AND UNDER YOUR SUPERVISION, WOULD THEY
18 TYPICALLY STAY IN A HALFWAY HOUSE?

19 A SOME, YES.

20 Q BUT NOT ALL?

21 A NO.

22 Q SOME WOULD JUST STAY WHEREVER THEY CHOOSE; IS THAT
23 WHAT THE OPTION IS THERE?

24 A ALL RESIDENCES HAVE TO BE PRE-APPROVED BY THE
25 PROBATION OFFICER. IF THEY WANT TO MOVE TO ANOTHER

1 LOCATION, IT HAS TO BE PRE-APPROVED BY THE PROBATION
2 OFFICER. A LOT OF TIMES IT'S DIFFICULT FOR SEX OFFENDERS
3 TO FIND AN APPROPRIATE RESIDENCE ON THE RESERVATION, AND
4 IN SOME OF THOSE CASES WE WILL UTILIZE THE HALFWAY HOUSE.

5 Q DOES THE HALFWAY HOUSE ALLOW FOR -- IS THERE ANY
6 SUBSTANCE ABUSE TREATMENT AVAILABLE TO THOSE THAT LIVE IN
7 HALFWAY HOUSES?

8 A YES.

9 Q AND IS THAT AGAIN PROVIDED THROUGH CONTRACTS THAT YOU
10 SECURE FOR YOUR CLIENT?

11 A YES.

12 Q THROUGH THE PROBATION OFFICE?

13 A YES.

14 Q SO YOU HAVE TESTIFIED THAT SEX OFFENDER TREATMENT --
15 YOUR OFFICE CONTRACTS WITH THAT FOR YOUR CLIENTS, AND
16 THAT FOR DRUG TREATMENT, YOUR OFFICE ALSO CONTRACTS AND
17 HELPS YOUR CLIENT GET SERVICES FOR DRUG TREATMENT?

18 A CORRECT.

19 Q DOES YOUR OFFICE ASSIST THE CLIENT WITH PLACEMENT IN
20 LIVING ARRANGEMENTS UPON THEIR RELEASE FROM PRISON?

21 A IF POSSIBLE, AND ESPECIALLY WITH SEX OFFENDERS, WE
22 TRY TO GET INVOLVED AS EARLY IN THE PROCESS AS WE CAN.
23 IT'S NOT NECESSARILY ALWAYS A POSSIBILITY, BUT WE ATTEMPT
24 TO, YES.

25 Q DO YOU KNOW WHETHER -- I KNOW YOU HAVE BEEN HERE FOR

1 THE LAST TWO DAYS, BUT I DON'T KNOW HOW MUCH INFORMATION
2 YOU WERE ABLE TO GLEAN FROM SITTING IN THE AUDIENCE.

3 DO YOU HAVE KNOWLEDGE AS TO WHETHER MR. ANTONE HAS
4 MADE A DECISION ABOUT WHETHER HE WILL LIVE IN A HALFWAY
5 HOUSE UPON RELEASE?

6 A MR. ANTONE HAS SIGNED A WAIVER AND ORDER FOR THE
7 PROBATION DEPARTMENT TO -- AND AGREED TO RESIDE IN A
8 HALFWAY HOUSE FOR UP TO 365 DAYS UNLESS RELEASED EARLIER
9 BY THE PROBATION OFFICER.

10 Q SO HE HAS SIGNED A WAIVER THAT WILL ALLOW HIM TO LIVE
11 THERE?

12 A YES.

13 Q IS THAT SOMETHING THAT MR. ANTONE DID VOLUNTARILY AS
14 FAR AS YOU KNOW?

15 A AS FAR AS I KNOW, YES. I SPOKE WITH HIM BRIEFLY
16 ABOUT SOME LEGAL MATTERS AS FAR AS REPRESENTATION AND
17 HAVING AN APPEARANCE BEFORE THE ARIZONA DISTRICT COURT
18 AND HE WAIVED THOSE RIGHTS AND SIGNED THE WAIVER.

19 Q SO WHAT IS YOUR UNDERSTANDING OF THAT DOCUMENT AGAIN?

20 A MY UNDERSTANDING IS THAT HE IS AGREEING TO THE
21 MODIFICATION OF HIS CONDITIONS OF SUPERVISED RELEASE AND
22 IS AGREEING TO ENTER THE HALFWAY HOUSE OR THE RESIDENTIAL
23 REENTRY CENTER FOR UP TO 365 DAYS, UNLESS RELEASED
24 EARLIER BY THE PROBATION OFFICER.

25 Q SO THAT WOULD MEAN THAT HE IS AGREEING TO ADDITIONAL

1 LIMITATIONS ON HIS LIVING ARRANGEMENTS?

2 A YES.

3 Q WOULD THAT BE ACCURATE?

4 A YES.

5 Q WOULD IT BE SAFE TO SAY THAT THE HALFWAY HOUSE
6 PROVIDES MORE RESTRICTIONS THAN HE WOULD HAVE SAY LIVING
7 WITH A FAMILY MEMBER OR SOMEWHERE ELSE?

8 A YES.

9 Q YOU TESTIFIED ABOUT SEX OFFENDER TREATMENT AND
10 SUBSTANCE ABUSE TREATMENT, BUT YOU ALLUDED TO THE FACT
11 THAT THERE ARE OTHER TREATMENTS AVAILABLE THAT MANY
12 PEOPLE OFTEN ELECT TO TAKE. CAN YOU TELL ME WHAT SOME OF
13 THOSE ARE?

14 A THEY COULD BE ANGER MANAGEMENT CLASSES, PARENTING
15 CLASSES, DOMESTIC VIOLENCE TREATMENT, SELF-HELP GROUPS
16 SUCH AS NA, AA, THINGS OF THAT NATURE.

17 Q AND THOSE PROGRAMS WOULD BE AVAILABLE TO MR. ANTONE
18 AS WELL?

19 A NOT DIRECTLY AT THE HALFWAY HOUSE, BUT WITHIN THE
20 COMMUNITY OF TUCSON IF THAT IS WHERE HE ENDED UP, YES.

21 Q AND SO IF HE WANTED TO CONTINUE TO BETTER HIMSELF AS
22 HE HAS OVER THE LAST YEARS IN PRISON, HE WOULD CERTAINLY
23 HAVE DIFFERENT OPTIONS AVAILABLE TO HIM?

24 A YES.

25 Q IN TUCSON?

1 A YES.

2 Q OF THE SEX OFFENDERS THAT YOU SUPERVISE, WHAT WOULD
3 YOU SAY IS A TYPICAL LENGTH OF TIME FOR A SUPERVISED
4 RELEASE TERM?

5 A THREE TO FIVE YEARS.

6 Q AND ARE YOU AWARE OF HOW LONG MR. ANTONE HAS?

7 A FIVE YEARS.

8 Q IS THERE, IN THAT FIVE YEAR PLAN, IS THERE A -- I
9 WILL WITHDRAW THAT, YOUR HONOR.

10 MS. ALLEN: THANK YOU.

11 THE COURT: MR. BREDENBERG OR MR. ROYSTER?

12 MR. ROYSTER: THANK YOU, JUDGE

13 CROSS EXAMINATION BY MR. ROYSTER:

14 Q ARE YOU GOING TO BE HIS PROBATION OFFICER WHEN HE
15 GETS OUT; IF HE DOES?

16 A NOT IF HE IS IN TUCSON, NO, SIR.

17 Q WHY NOT?

18 A I SUPERVISE NORTHERN ARIZONA. TUCSON IS SOUTHERN
19 ARIZONA.

20 Q HOW FAR IS THAT FROM WHERE YOU ARE?

21 A TUCSON IS APPROXIMATELY FOUR -- THREE AND A HALF
22 HOURS FROM FLAGSTAFF, ARIZONA.

23 Q SO HE IS NOT EVEN GOING TO BE IN THE AREA WHERE YOU
24 ARE SUPERVISING; IS THAT RIGHT?

25 A CORRECT.

1 Q NOW, SEX OFFENDERS THAT YOU HAVE SUPERVISED
2 PERSONALLY, HAVE ANY OF THEM EVER COMMITTED A NEW SEX
3 OFFENSE?

4 A NOT THAT THEY HAVE BEEN CHARGED AND CONVICTED OF THAT
5 I AM AWARE OF.

6 Q HAVE ANY OF THEM COMMITTED A NEW SEX OFFENSE WHILE
7 THEY HAVE BEEN ON SUPERVISED RELEASE?

8 A I DON'T KNOW.

9 Q YOU INDICATED THAT THERE WAS SOME SORT OF AGREEMENT
10 ABOUT A HALFWAY HOUSE. DO YOU KNOW WHERE THE HALFWAY
11 HOUSE IS?

12 A IT WOULD BE IN TUCSON.

13 Q HOW ARE THE SERVICES ON THE RESERVATION THERE, THAT
14 TOHONO O'ODHAM RESERVATION? HOW ARE THE SERVICES THERE?

15 A I DON'T UNDERSTAND YOUR QUESTION. HOW ARE THEY AS
16 FAR AS --

17 Q ARE THE SERVICES FEW AND FAR BETWEEN?

18 A THERE ARE SEX OFFENDER TREATMENT PROVIDERS THAT WE
19 HAVE CONTRACTED ON THE T.O. AS WELL AS SUBSTANCE ABUSE
20 TREATMENT PROVIDERS ON THE T.O.

21 Q WOULD YOU DESCRIBE IT AS ALMOST LIKE A THIRD WORLD
22 COUNTRY?

23 A THE RESERVATIONS THAT I HAVE BEEN TO, YES, AND FROM
24 WHAT I UNDERSTAND, THE T.O. IS NOT DIFFERENT FROM WHAT I
25 HAVE PERSONALLY SUPERVISED.

1 MR. ROYSTER: NO OTHER QUESTIONS. THANK YOU.

2 THE COURT: MS. ALLEN, ANYTHING FURTHER?

3 MS. ALLEN: YES. THANK YOU.

4 REDIRECT EXAMINATION BY MS. ALLEN:

5 Q MS. SCHAUDER, DO YOU KNOW WHO WILL SUPERVISE MR.
6 ANTONE UPON HIS RELEASE?

7 A I DO.

8 Q AND WHO IS THAT?

9 A SENIOR PROBATION OFFICER EDWARD MARTIN.

10 Q AND DOES SENIOR PROBATION OFFICER EDWARD MARTIN
11 SUPERVISE THE SAME NUMBER OF PEOPLE THAT YOU SUPERVISE?

12 A NO, HE DOES NOT.

13 Q HOW MANY DOES HE SUPERVISE? IS IT MORE OR LESS?

14 A IT'S LESS.

15 Q WHY IS IT LESS?

16 A SENIOR OFFICERS HAVE A LOWER CASE LOAD DUE TO THE
17 TYPES OF CASES THAT THEY GENERALLY SUPERVISE. MR.
18 MARTIN'S CASELOAD IS GOING TO BE PRIMARILY MADE UP OF SEX
19 OFFENDERS, AND SOME OTHER HIGH RISK TYPE OFFENSES SUCH AS
20 MURDER, BUT MOSTLY HE WILL SUPERVISE SEX OFFENDERS.

21 Q YOU TESTIFIED THAT YOU DON'T LIVE IN THAT AREA, BUT
22 ARE YOU AWARE OF THE SERVICES THAT ARE AVAILABLE THROUGH
23 MR. MARTIN'S AREA?

24 A TO DEGREE, YES.

25 Q AND HAVE YOU TESTIFIED TO ANYTHING THAT YOU DID NOT

1 KNOW ABOUT?

2 A NO.

3 Q ARE THERE MORE SERVICES AVAILABLE IN TUCSON THAN YOU

4 WOULD SAY ARE AVAILABLE ON THE RESERVATION?

5 A ABSOLUTELY, YES.

6 Q WHAT ABOUT IN FLAGSTAFF?

7 A YES. MORE SERVICES IN TUCSON THAN IN FLAGSTAFF.

8 Q SO THERE ARE MORE SERVICES AVAILABLE IN TUCSON. WHAT

9 ABOUT OPPORTUNITIES FOR EMPLOYMENT? WOULD YOU SAY THERE

10 ARE MORE OPPORTUNITIES FOR EMPLOYMENT IN TUCSON?

11 A ABSOLUTELY.

12 Q IN TUCSON THAN ON THE RESERVATION?

13 A ABSOLUTELY.

14 Q AND IN TUCSON THAN IN FLAGSTAFF?

15 A UNFORTUNATELY, YES.

16 Q SO YOUR TESTIMONY IS THAT HE WILL HAVE A SENIOR

17 OFFICER WHO SPECIALIZES IN SEX OFFENDERS WHO HAS LESS

18 PEOPLE TO SUPERVISE AND MORE SERVICES AVAILABLE?

19 A CORRECT.

20 MS. ALLEN: THANK YOU.

21 THE COURT: MR. ROYSTER?

22 MR. ROYSTER: NO QUESTION. THANK YOU, JUDGE.

23 THE COURT: MA'AM, YOU MAY STEP DOWN.

24 THE WITNESS: THANK YOU.

25 MS. ALLEN: YOUR HONOR, WE WOULD ASK THAT MS.

1 SCHAUDER BE RELEASED AT THIS TIME.

2 THE COURT: ANY OBJECTION TO THAT?

3 MR. ROYSTER: NOT FROM THE GOVERNMENT. BUT WE
4 DO RENEW OUR OBJECTION WITH RESPECT TO THE RELEVANCE OF
5 HER TESTIMONY.

6 THE COURT: THAT IS FINE. MS. SCHAUDER IS
7 RELEASED FROM HER SUBPOENA.

8 ANY FURTHER EVIDENCE FOR THE RESPONDENT?

9 MS. ALLEN: YES, YOUR HONOR. NEXT THE
10 RESPONDENT WILL CALL DR. ROY DAUM.

11 DR. ROY DAUM, CALLED AS A WITNESS,
12 HAVING BEEN FIRST DULY SWORN, ON HIS
13 OATH, TESTIFIED AS FOLLOWS:

14 THE CLERK: PLEASE HAVE A SEAT AND STATE YOUR
15 NAME FOR THE RECORD.

16 THE WITNESS: MY NAME IS ROY DAUM, R-O-Y
17 D-A-U-M.

18 DIRECT EXAMINATION BY MS. ALLEN:

19 Q DR. DAUM, WHERE DO YOU LIVE?

20 A I LIVE IN LARNED, KANSAS.

21 Q WHERE DID YOU GO TO COLLEGE?

22 A I GOT A BACHELOR'S OF ART IN -- FROM WEST TEXAS STATE
23 UNIVERSITY IN CANYON, TEXAS. I GOT A MASTER'S IN
24 EDUCATIONAL ADMINISTRATION FROM STEVENVILLE A & M. I GOT
25 A DOCTORATE IN EDUCATION FROM COMMERCE, TEXAS.

26 AND I WENT BACK AND GOT A MASTER'S IN COUNSELING AND

1 PSYCHOLOGY FROM TROY STATE. I HAVE A DOCTORATE IN
2 PSYCHOLOGY FROM ARGOSY AT DALLAS.

3 Q DO YOU HAVE ANY POST DOCTORATE TRAINING?

4 A YES.

5 Q CAN YOU TELL US ABOUT THAT?

6 A ARE YOU ASKING ABOUT FORENSIC TRAINING?

7 Q YES, SPECIFICALLY. THANK YOU.

8 Q I DID A PRACTICUM IN -- I AM NOT SURE IF YOU CALL IT
9 FCI OR HOW YOU CALL IT, BUT IT'S IN CARLSVILLE WITH A
10 MEDICAL CENTER WITH THE BOP IN WHICH I WORKED WITH THE
11 CHIEF PSYCHIATRIST -- OR CHIEF PSYCHOLOGIST IN FORENSIC
12 TRAINING.

13 HE WAS DOING COMPETENCY EVALS. HE DID EVALS FOR
14 DIFFERENT -- COMPETENCY TO STAND TRIAL, PRESENTENCE, THAT
15 KIND OF THING, AND I ALSO TAUGHT THE 40 HOUR DRUG AND
16 ALCOHOL CLASSES AT THAT PRISON.

17 AT MY SECOND PRACTICUM, I WENT WITH A PSYCHOLOGIST
18 THROUGHOUT THE NORTHERN PART OF NEW MEXICO GOING FROM
19 JAIL TO JAIL DOING FORENSIC EVALUATIONS IN REGARDS,
20 AGAIN, TO COMPETENCY, THE ABILITY TO WAIVE RIGHTS FOR
21 VARIOUS OFFENSES THAT THEY DID.

22 MY INTERNSHIP WAS, I WAS FORTUNATE TO BE ACCEPTED AS
23 AN INTERN AT LARNED STATE HOSPITAL WHERE THEY HAVE THE
24 FIRST SEXUAL TREATMENT. IT'S CALLED SOTP, SEX OFFENDER
25 TREATMENT PROVIDER. THIS IS THE ONE THAT -- WHERE WE

1 HAVE 212 CIVILLY COMMITTED INDIVIDUALS.

2 MY POST DOC THEN I WAS FORTUNATE TO STAY THERE, AND
3 I WAS -- STARTED MY TRAINING IN FORENSICS THERE IN A
4 DIFFERENT UNIT.

5 Q WHAT KIND OF TRAINING DID YOU GET IN THE UNIT?

6 A AS AN INTERN, I WAS ALLOWED TO WORK WITH A --
7 SOMETHING WE CALL ANNUAL REPORTS WHERE ONCE THE RESIDENT
8 IS IN THE PROGRAM, THEN OUR STATE REQUIRES EACH YEAR AN
9 ANNUAL REPORT AS TO DO THEY STILL MEET REQUIREMENTS FOR
10 SEXUAL CONTAINMENT OR CIVILLY COMMITTED, AND SO WE HAVE
11 TO SUBMIT REPORTS ON EVERY RESIDENT THAT IS THERE EACH
12 YEAR. I WAS FORTUNATE TO BE ABLE TO ASSIST IN THAT.

13 THE OTHER PART I DID WAS I DID DBT, DIALECTICAL
14 BEHAVIOR THERAPY.

15 Q WHAT IS THAT, DR. DAUM?

16 A IT'S A PROGRAM THAT MARSHAL LANAHAN DESIGNED FOR
17 BORDERLINE PERSONALITY DISORDERS. BECAUSE THE MAJORITY
18 OF THE CIVILLY COMMITTED INDIVIDUALS NORMALLY HAVE SOME
19 KIND OF PERSONALITY DISORDER. IT'S A NICE FIT FOR A
20 TREATMENT PROGRAM.

21 AND OUR UNIT, OUR STATE HAS BEGUN TO USE THAT. I
22 HAD A CASE LOAD OF LIKE FOUR GROUPS A WEEK FOR AN HOUR
23 AND A HALF PLUS ANYWHERE BETWEEN 5 AN 10 THERAPY SESSIONS
24 A WEEK WITH THAT.

25 Q WAS THAT -- WERE YOU ACTUALLY PROVIDING SEX OFFENDER

1 TREATMENT? IS WHAT WHAT YOU WOULD CALL THAT? WAS THAT
2 PART OF A SEX OFFENDER TREATMENT PROGRAM?

3 A THAT WAS THE PROGRAM; YES, MA'AM.

4 Q THAT WAS THE PROGRAM AT THE HOSPITAL?

5 A WITHIN -- LARNED STATE HOSPITAL IS AN UMBRELLA
6 ORGANIZATION THAT HAS A SEXUAL PREDATOR, SEXUAL -- HOW DO
7 YOU CALL CIVILLY COMMITTED PROGRAM, AND THEN IT HAS ADULT
8 PSYCHOLOGY OR PSYCHIATRIC SERVICES AS WELL AS A PRISON
9 PROGRAM.

10 Q SO YOUR TESTIMONY IS THAT YOU HAVE PROVIDED SEX
11 OFFENDER TREATMENT ON A WEEKLY BASIS TO PEOPLE THAT HAVE
12 BEEN CIVILLY COMMITTED; IS THAT WHAT YOU SAID?

13 A YES. THEN THE LATTER PART OF THE TRAINING DURING MY
14 POST DOC, THE YEAR AFTER I GRADUATED, WAS TO WORK ON
15 UNITS WHERE THESE ARE DEPARTMENT OF CORRECTION
16 INDIVIDUALS WHO HAVE A MENTAL DISORDER.

17 AND I PROVIDED -- WE HAD OR FORMULATED A PROGRAM FOR
18 SEXUAL OFFENDER TREATMENT FOR THAT PARTICULAR GROUP. I
19 TAUGHT THAT GROUP FOR A YEAR AND A HALF, ALMOST A YEAR
20 AND A HALF.

21 Q WHEN YOU SAY YOU TAUGHT THAT GROUP, WHO WERE YOU
22 TEACHING?

23 A THESE WOULD BE INDIVIDUALS THAT FOR ONE REASON OR
24 ANOTHER WERE INCARCERATED IN THE STATE OF KANSAS, BUT
25 THEY ALSO HAVE SEX OFFENDER CONVICTIONS.

1 Q I JUST WANT TO BACK UP FOR JUST A SECOND. WHERE ARE
2 YOU LICENSED TO PRACTICE, DOCTOR?

3 A I HAVE A LICENSE TO PRACTICE IN KANSAS. I AM
4 TEMPORARILY LICENSED IN INDIANA. AND I HAVE A LICENSE IN
5 NEW MEXICO.

6 Q HAVE YOU DONE ANY WORK FOR FEDERAL PROBATION?

7 A YES.

8 Q CAN YOU TELL US ABOUT IT?

9 A I HAVE. YES, I CAN. AFTER I GOT MY MASTER'S IN
10 PSYCHOLOGY AND COUNSELING, I CONTRACTED WITH THE
11 DEPARTMENT -- FEDERAL DEPARTMENT OF CORRECTIONS AND WAS
12 ONE OF THE CONTRACT INDIVIDUALS TO PROVIDE SEX OFFENDER
13 TREATMENT TO THAT REGION OF NORTHERN -- NOT NORTHERN, BUT
14 SOUTHERN NEW MEXICO.

15 AND I PUT TOGETHER A PROGRAM CALLED PASA, WHICH
16 STANDS FOR PROGRAM FOR ADULT SEX ABUSERS, SEX OFFENDERS,
17 IN WHICH I GOT THE INDIVIDUALS THAT HAD LONG TERM
18 SENTENCES, THAT HAD -- THAT WERE CONVICTED FOR SEX
19 OFFENSES, AND THEY WERE RELEASED AND I HELPED THEM
20 DEVELOP PROGRAMS OR TECHNIQUES FOR NOT RECIDIVATING.

21 I HELPED THEM LEARN HOW TO REINTEGRATE INTO THE
22 COMMUNITY ALONG WITH DOING SEX OFFENDER TREATMENT
23 PROVIDERS.

24 Q I AM GOING TO ASK YOU MORE ABOUT SOME OF THE THINGS
25 YOU DID TO HELP PEOPLE PREPARE TO REINTEGRATE INTO

1 SOCIETY. I WANT TO ASK YOU JUST A LITTLE BIT MORE ABOUT
2 YOUR TRAINING.

3 HAVE YOU TESTIFIED IN COURT BEFORE REGARDING A SEX
4 OFFENDER DANGEROUS MATTER SUCH AS THIS?

5 A YES, I HAVE.

6 Q CAN YOU TELL US WHAT STATES YOU HAVE TESTIFIED IN?

7 A I WANT TO TO BE CLEAR ABOUT THIS BECAUSE WHEN I DID
8 MY DEPOSITION, I WAS HAVING TROUBLE ANSWERING SOME OF
9 THOSE QUESTIONS.

10 IN NEW MEXICO, I TESTIFIED TWICE CONCERNING -- THEY
11 DON'T CALL IT SEXUAL -- BEING A SEXUAL PREDATOR, BUT THEY
12 WANTED TO KNOW IF THIS PERSON WAS A SEXUAL PREDATOR. I
13 DID THAT TWICE.

14 Q OKAY.

15 A AND THAT WAS BEING -- THAT WAS PART OF OUR PROGRAM.

16 ALSO, IN THE STATE OF NEW MEXICO, I TESTIFIED THREE
17 DIFFERENT TIMES WITH REGARD TO -- IN COURT WITH REGARDS
18 TO SEX OFFENSES, BUT THE COURT WAS NOT ASKING ABOUT SEX
19 OFFENSES. THEY WERE ASKING ABOUT SOMETHING ELSE, BUT
20 THEY BROUGHT ME IN AS A COLLATERAL WITNESS.

21 Q OKAY.

22 A SINCE I HAVE BEEN IN NEW MEXICO -- I AM SORRY --
23 SINCE I HAVE BEEN IN KANSAS, I HAVE TESTIFIED OVER A
24 PERIOD OF TIME NOT FOR SEXUAL PREDATORS, BUT I HAVE
25 TESTIFIED FOR COMPETENCY EVALS.

1 Q HOW MANY TIMES DO YOU THINK YOU HAVE TESTIFIED FOR
2 COMPETENCY?

3 A THAT IS REALLY HARD TO SAY.

4 Q WOULD YOU SAY MORE THAN TEN?

5 A YES. MAYBE 10 OR 20. SOMETHING IN THAT AREA.

6 Q SO WERE THOSE -- THE TIMES YOU TESTIFIED, WERE THOSE
7 IN STATE COURT?

8 A IT WAS ALL IN STATE, STATE DISTRICT COURT, YES,
9 MA'AM.

10 Q HAVE YOU EVER TESTIFIED IN FEDERAL COURT?

11 A NO, MA'AM. THIS IS MY FIRST TIME. AND OBVIOUSLY I
12 AM NERVOUS.

13 Q SO THIS WILL BE THE FIRST ADAM WALSH CASE?

14 A THIS IS MY FIRST TESTIMONY IN THAT, YES.

15 Q HAVE YOU BEEN INVOLVED IN ANY OTHER ADAM WALSH CASES
16 BESIDES THIS CASE?

17 A I HAVE. I HAVE BEEN ASKED TO WORK WITH SIX OTHER
18 INDIVIDUALS.

19 Q SO THIS IS YOUR FIRST TIME TESTIFYING, BUT THIS IS
20 NOT YOUR FIRST ADAM WALSH CASE?

21 A THAT'S CORRECT.

22 Q YOU SAID LARNED STATE HOSPITAL IS IN THE STATE OF
23 KANSAS. IS THAT THE HOSPITAL WHERE MR. HENDRICKS FROM
24 KANSAS VERSUS HENDRICKS WAS HOUSED?

25 A YES, MA'AM.

1 Q IS HE STILL HOUSED THERE?

2 A HE WAS RECENTLY. I DON'T KNOW WHERE THE MAN IS AT
3 NOW.

4 MS. ALLEN: YOUR HONOR, AT THIS TIME I WOULD
5 LIKE TO PROFFER DR. ROY DAUM AS AN EXPERT IN THIS MATTER.

6 THE COURT: MR. ROYSTER?

7 MR. ROYSTER: I DO HAVE A COUPLE OF QUESTIONS.

8 THE COURT: THAT WILL BE FINE.

9 VOIR DIRE BY MR. ROYSTER:

10 Q DR. DAUM, YOU WERE ASKED ON DIRECT ABOUT -- OR YOU
11 INDICATED ON DIRECT YOU HAD SOME TROUBLE ANSWERING
12 QUESTIONS AT THE DEPOSITION, AND YOU INDICATED YOU HAD
13 TESTIFIED TWICE IN NEW MEXICO ABOUT SEXUAL PREDATORS.
14 THOSE WEREN'T CIVIL COMMITMENT CASES THOUGH; WERE THEY?
15 A NO, SIR. THAT WAS ONE OF THE THINGS WHERE YOU AND I
16 KIND OF -- I ASKED FOR CLARIFICATION, IF YOU REMEMBER.
17 NEW MEXICO DOES NOT HAVE OR DID NOT HAVE AT THAT TIME A
18 COMMITMENT. WHAT THEY HAD IS WHAT WAS DISCUSSED EARLIER
19 HERE ABOUT THEY RELEASE AND GO INTO TREATMENT FACILITIES.
20 IN FACT, MEXICO (SIC) DOES NOT EVEN HAVE HALFWAY HOUSES.
21 THEY CONTRACT WITH A PERSON LIKE MYSELF AND THEN THAT
22 PERSON SETS UP A PROGRAM AND THEN THE RESIDENT HAS TO
23 ATTEND THE PROGRAM, AND THEN REPORT TO PROBATION
24 OFFICERS. THAT IS WHAT I DID.

25 Q SO YOU HAVE NEVER TESTIFIED IN STATE OR FEDERAL COURT

1 IN ANY CIVIL COMMITMENT CASE RELATING TO SEX OFFENDERS?

2 A NO, SIR.

3 Q IS THAT RIGHT?

4 A THAT'S CORRECT.

5 Q NOW, I THOUGHT I UNDERSTOOD YOU TO SAY THAT YOU ARE
6 DOING CIVIL -- YOU ARE DOING SEX OFFENDER TREATMENT ON A
7 WEEKLY BASIS FOR THOSE CIVILLY COMMITTED?

8 A I DID, YES, SIR.

9 Q I UNDERSTOOD YOU TO SAY THAT YOU ARE DOING THAT NOW.
10 IS THAT ACCURATE?

11 A NO, SIR. NO. NOT NOW.

12 Q YOU HAVEN'T BEEN DOING ANY SEX OFFENDER TREATMENT FOR
13 SOME TIME; IS THAT RIGHT?

14 A NO, SIR, THAT IS NOT RIGHT.

15 Q WHAT WAS THE LAST TIME YOU DID ANY SEX OFFENDER
16 TREATMENT?

17 A ABOUT A YEAR OR A YEAR AND A HALF AGO. CAN I CLARIFY
18 THAT, SIR?

19 Q SURE.

20 A THE INTERNSHIP WAS WITHIN THE SOTP PROGRAM. THAT IS
21 WHERE I WORKED FOR A SOLID YEAR AS AN INTERN, AND POST
22 DOC, WHEN I MOVED TO A DIFFERENT PROGRAM, I PROVIDED SEX
23 OFFENDER TREATMENT TO RESIDENT DOC INDIVIDUALS.

24 Q HOW MANY PEOPLE ARE HOUSED OR CIVILLY COMMITTED IN
25 KANSAS AS SEXUALLY VIOLENT PREDATORS?

1 A WE ARE AVERAGING ABOUT 18 A YEAR. WE ARE UP TO 214
2 AT THIS TIME.

3 Q DO YOU WORK WITH ANY OF THOSE INDIVIDUALS?

4 A NOT AT THIS TIME, NO, SIR.

5 Q HAVE YOU EVER DONE ANY FORENSIC EVALUATIONS WITH
6 RESPECT TO ANY OF THOSE INDIVIDUALS?

7 A YES, SIR.

8 Q WHAT ABOUT ARE RESPECT TO WHETHER THEY ARE SEXUALLY
9 DANGEROUS?

10 A IN KANSAS, THAT WOULD BE CIVILLY COMMITTED, AND NO,
11 SIR, I HAVE NOT.

12 Q SO YOU HAVEN'T DONE ANY FORENSIC EVALUATIONS ON
13 SEXUAL DANGEROUSNESS FOR ANY OF THE 214 THAT ARE AT THE
14 FACILITY WHERE YOU ARE LOCATED?

15 A NO, SIR, THEY ALREADY HAVE THAT.

16 MR. ROYSTER: YOUR HONOR, AT THIS TIME WE
17 OBJECT TO THE QUALIFICATIONS OF DR. DAUM TO TESTIFY IN
18 THIS PROCEEDING AS A FORENSIC PSYCHOLOGIST WITH RESPECT
19 TO SEXUAL DANGEROUSNESS.

20 THE COURT: IS HE BEING PROFFERED AS AN EXPERT
21 IN FORENSIC PSYCHOLOGY?

22 MS. ALLEN: YES, HE IS, YOUR HONOR.

23 THE COURT: WHAT IS THE BASIS FOR THE
24 GOVERNMENT'S POSITION, MR. ROYSTER?

25 MR. ROYSTER: THAT THEY HAVE NOT ESTABLISHED

1 THAT HE ACTUALLY DOES FORENSIC EVALUATIONS WITH RESPECT
2 TO DETERMINING SEXUAL DANGEROUSNESS.

3 THE COURT: WELL, THAT IS NOT A REQUIREMENT TO
4 RECOGNIZE HIM AS AN EXPERT IN THE FIELD; IS IT?

5 MR. ROYSTER: CERTAINLY WITH RESPECT TO WHAT
6 THE ISSUES THAT HE IS GOING TO BE ASKED TO OPINE ON.

7 THE COURT: CAN HE NOT BE QUALIFIED BY
8 TRAINING?

9 MR. ROYSTER: HE CAN, BUT I AM NOT CERTAIN
10 THAT THEY HAVE ESTABLISHED THAT EITHER. ON THE ISSUE
11 OF -- AGAIN, I UNDERSTAND THAT HE CAN BE TENDERED TO THE
12 COURT AS A FORENSIC EVALUATOR, BUT HE IS GOING TO BE
13 ASKED TO GIVE OPINIONS ABOUT WHETHER SOMEONE IS SEXUALLY
14 DANGEROUS, AND I AM FAIRLY CERTAIN I HAVEN'T HEARD THAT
15 HE HAS EVER DONE THAT. EVER.

16 THE COURT: SO --

17 MR. ROYSTER: OR BEEN TRAINED TO DO IT. I AM
18 SORRY TO INTERRUPT THE COURT.

19 THE COURT: MS. ALLEN, WHAT IS YOUR VIEW ON
20 THAT? DOES DR. DAUM HAVE TRAINING OR EXPERIENCE THAT IS
21 RELEVANT TO RENDERING AN OPINION?

22 THE WITNESS: I DISAGREE WITH THAT, YOUR
23 HONOR.

24 THE COURT: SIR, YOU MAY NOT SPEAK AT THIS
25 TIME. YOU MAY ANSWER QUESTIONS, BUT OTHERWISE, SIR, YOU

1 ARE NOT PERMITTED.

2 MS. ALLEN.

3 MS. ALLEN: YOUR HONOR, I TOTALLY DISAGREE
4 WITH THE GOVERNMENT'S POSITION. HE IS MORE THAN
5 QUALIFIED. HE TESTIFIED THAT HE HAD PROVIDED SEX
6 OFFENDER TREATMENT FOR SEVERAL YEARS. HE HAS ALSO WORKED
7 IN THAT HOSPITAL WHERE THEY DO -- THEY DO SEX OFFENDER
8 TREATMENT. HE WORKED WITH THE NEW MEXICO GOVERNMENT
9 PROVIDING COUNSELING AND THERAPY TO SEX OFFENDERS.

10 HE WORKS IN A HOSPITAL WHERE EVERYONE THAT IS
11 HOUSED THERE IN A PARTICULAR UNIT HAS BEEN CIVILLY
12 COMMITTED BECAUSE THEY HAVE BEEN DETERMINED TO BE
13 SEXUALLY DANGEROUS.

14 I THINK IF WE CAN GO THROUGH SOME MORE OF HIS
15 TESTIMONY, I COULD ALSO ASK HIM ABOUT WHAT HIS EXPERIENCE
16 IS WITH COMPLETING ACTUARIALS AND DOING FORENSIC
17 EVALUATIONS AS WELL. HE HAS DONE THEM IN THE PAST. AND
18 HE IS CURRENTLY WORKING ON CASES, 4248 CASES AS WELL. HE
19 DOES HAVE THE FORENSIC EXPERTISE TO GO FORWARD.

20 THE COURT: I WOULD BE INTERESTED IN HEARING
21 MORE ABOUT THAT.

22 CONTINUED DIRECT EXAMINATION BY MS. ALLEN:

23 Q DR. DAUM, IF YOU COULD TELL US A LITTLE BIT MORE
24 ABOUT YOUR TRAINING IN FORENSICS. WHEN DID YOU GET
25 INVOLVED WITH SEX OFFENDERS?

1 A IN NEW MEXICO.

2 Q HOW DID YOU GET INVOLVED WITH THEM IN NEW MEXICO?

3 A I STARTED WORKING WITH A PSYCHOLOGIST WHO HAD A
4 PROGRAM FOR A DRUG AND ALCOHOL TREATMENT, AND IN THAT
5 PROCESS, THE PROBATION OFFICE APPROACHED US ABOUT THE
6 NEED FOR SEX OFFENDER TREATMENT PROVIDER.

7 BASED UPON MY TRAINING, I APPLIED FOR THAT CONTRACT,
8 AND THEN I WENT FOR TRAINING WITH THE BOP UP IN
9 ALBUQUERQUE. AFTER THE TRAINING, I ESTABLISHED THE
10 PROGRAM, AND IT WAS VERY SUCCESSFUL OVER A PERIOD OF
11 TIME.

12 WHEN I WENT BACK AND GOT MY DOCTORATE, I LEFT THAT
13 PROGRAM AND WENT TO LARNED, AND I SPECIFICALLY CHOSE
14 LARNED BECAUSE OF THE TRAINING AVAILABLE. WHAT KANSAS
15 REQUIRES IS THEY REQUIRE -- THEY REQUIRE, IN A SEXUAL
16 PREDATOR PROGRAM, YEARLY UPDATES, WHICH MEANS THAT YOU
17 HAVE TO BE ABLE TO DETERMINE THE DANGEROUSNESS OF THAT
18 PERSON.

19 SO I HAVE EXPERIENCE WITH THAT. I HAVE NOT AUTHORED
20 A REPORT WITH THAT, BECAUSE THAT IS A GROUP DECISION
21 WHERE THE MAJORITY OF THE PEOPLE COME TOGETHER TO
22 FORMULATE THE OPINION AND THE SUPERVISING PSYCHOLOGIST
23 SIGNS OFF ON THE REPORT. I HAVE EXPERIENCE WITH THAT.

24 WHEN I WENT BACK ACROSS THE STREET TO DO MY POST
25 DOC, I FOUND A GROUP OF PSYCHOLOGISTS THAT I WORK WITH,

1 THAT WE MEET EVERY TUESDAY, AND WE GO THROUGH THE ITEMS
2 OF FORENSIC EVALUATION.

3 I HAVE BEEN TRAINED AND ALLOWED TO TRAIN, GOING TO
4 WORKSHOPS AND FORENSIC EVALUATION WORKSHOPS. I AM A
5 MEMBER OF ATSA, AND I FEEL I AM VERY QUALIFIED TO DO THIS
6 WORK.

7 THE COURT: DR. DAUM, HOW MANY OF THESE
8 UPDATES THAT YOU REFERENCED WHERE THE TEAM ULTIMATELY
9 AUTHORS THE REPORT, HOW MANY OF THOSE HAVE YOU DONE OR
10 BEEN INVOLVED IN?

11 THE WITNESS: WITHIN THAT YEAR, THERE WERE
12 185, I BELIEVE, DURING THAT YEAR. EVERY ONE OF THOSE
13 PEOPLE HAD TO HAVE A PLAN, A TREATMENT PLAN. THEY ALSO
14 HAD TO HAVE A REPORT TO COURT. I WAS INVOLVED IN ABOUT A
15 THIRD OF THOSE. THERE WERE THREE OF US, AND THE
16 SUPERVISING PSYCHOLOGIST DIVIDED US UP, AND WE WORKED ON
17 EACH OF THOSE PLANS.

18 THE COURT: SO THAT WOULD BE ABOUT 60 THAT YOU
19 WERE DIRECTLY INVOLVED IN?

20 THE WITNESS: YES, SIR.

21 THE COURT: AND I GATHER -- WERE THE ISSUES IN
22 THOSE CASES, WERE THEY AT LEAST PART OF THE EVALUATION,
23 DID IT CONCERN SEXUAL DANGEROUSNESS DEALING WITH THE RISK
24 OF REOFFENSE, VOLITIONAL CONTROL, THOSE TYPE OF ISSUES?

25 THE WITNESS: KANSAS WAS THE FIRST STATE OR IT

1 WAS AMONG THE FIRST STATES THAT PUT IN CIVIL COMMITMENT
2 OR HAD CIVIL COMMITMENT LAWS. WE FEEL LIKE THAT THOSE OF
3 US THAT DO THAT WORK AND WORK WITH A PARTICULAR CIVIL
4 COMMITMENT PEOPLE, THAT WE ARE WELL TRAINED WITH THAT
5 BECAUSE WE ARE AT THE FOREFRONT IN THE COURTS, BUT NEVER
6 IN A DISTRICT COURT. THIS IS ALWAYS -- NEVER IN A
7 FEDERAL COURT. THIS IS ALWAYS DISTRICT, BUT WE FIND THAT
8 WE HAVE PEOPLE FROM ALL OVER THE COUNTRY COMING TO US TO
9 LOOK AT OUR PROGRAM, EMULATE THAT, ESPECIALLY AMONG THE
10 FORENSIC PEOPLE AS EVIDENCED BY SOME OF THE ARGUMENTS
11 THAT WE GET INTO WHEN WE MEET.

12 THE COURT: SO THE CIVIL, IF I AM
13 UNDERSTANDING YOU CORRECTLY, THE CIVIL COMMITMENT
14 STANDARD THAT YOU ARE USED TO DEALING WITH IN KANSAS IS
15 SIMILAR TO THE FEDERAL STANDARD UNDER THE ADAM WALSH ACT?

16 THE WITNESS: EXCEPT FOR THE VOCABULARY, I
17 DON'T SEE ANY DIFFERENCE AT ALL, YOUR HONOR.

18 THE COURT: MS. ALLEN.

19 Q DR. DAUM, IF YOU COULD TALK A LITTLE BIT, YOU SAID
20 YOU DON'T PROVIDE TREATMENT ANY MORE, BUT YOU HAVE BEEN
21 INVOLVED WITH THE WEEKLY MEETINGS WHERE YOU REVIEW
22 FORENSIC, I THINK YOU SAID, FORENSIC EVALUATIONS?

23 A THAT IS TRUE.

24 Q CAN YOU TELL US ABOUT THAT, PLEASE?

25 A I CAN. THERE ARE NINE OF US IN THAT PARTICULAR UNIT.

1 WE MEET EVERY TUESDAY FROM 1:00 TO 2:00. EVERY OTHER
2 WEEK WE TALK ABOUT SEXUAL PREDATOR EVALUATIONS AND HOW
3 THAT IS DONE.

4 WE AGREE UPON WHAT TESTS WE ARE GOING TO USE. WE
5 AGREE UPON HOW WE DO INTERROGATORIES. WE BEGIN TO TALK
6 ABOUT HOW WE WORK WITH COURTS, HOW THE COURTS FEED BACK
7 TO US ABOUT THE QUALITY OF THE REPORTS. WE DEBRIEF ON
8 THAT.

9 I DON'T DO THAT TREATMENT AGAIN BECAUSE I AM
10 COMPLETELY WORKING TOTALLY WITH FORENSIC REPORTS. I WILL
11 MEET EACH OF THE PEOPLE IN KANSAS THAT COMES INTO OUR
12 DEPARTMENT. I DO AN HOUR, HOUR AND A HALF OF ADMISSION
13 PROCESS WITH THEM. WE ASCERTAIN THE DEGREE OF
14 SERIOUSNESS OF THE DANGEROUSNESS OF THAT PERSON AND
15 PERHAPS WE HAVE A TOTAL OF, A WEEK, WE'LL HAVE SIX TO
16 EIGHT ADMISSIONS, PROBABLY TWO TO THREE OR FOUR OF THOSE
17 WILL BE FOR SEX PREDS.

18 WE WILL ALSO HAVE A NUMBER OF THOSE THAT WILL HAVE
19 SEX OFFENSES. SO WE DO ASSESS THE SEXUAL DANGEROUSNESS
20 OF AN INDIVIDUAL WHEN HE COMES ON TO THE UNIT.

21 Q DO YOU HAVE EXPERIENCE WITH ACTUARIALS?

22 A YES.

23 Q AND HAVE YOU BEEN TRAINED TO COMPLETE ACTUARIALS?

24 A YES.

25 Q TELL ME ABOUT YOUR TRAINING WITH THAT?

1 A WE DISCUSS IN THAT MEETING BASE RATES, PROBLEMS WITH
2 MNSOST, THE NEED TO GO FROM A STATIC-99 TO STATIC-99R,
3 FROM 2000 TO 2000R, WHY WE DO THAT, WHAT TO LOOK FOR AS
4 FAR AS MAKING CLINICAL JUDGMENTS WITH RELATION TO THAT.
5 WE ARE WELL VERSED ON THE VARIOUS INSTRUMENTS TO USE AND
6 WHEN TO USE THOSE INSTRUMENTS. AGAIN, ALL AT THE
7 DISTRICT LEVEL. NEVER ON THE FEDERAL LEVEL.

8 MS. ALLEN: THANK YOU. AGAIN, YOUR HONOR, WE
9 WOULD OFFER DR. DAUM AS AN EXPERT IN THIS MATTER.

10 THE COURT: MR. ROYSTER ANYTHING FURTHER?

11 MR. ROYSTER: I DO HAVE ONE QUESTION.

12 THE COURT: YES, SIR.

13 MR. ROYSTER: AND THEN I WOULD GO AHEAD AND
14 LET THE COURT KNOW I AM GOING TO GO AHEAD AND RENEW MY
15 OBJECTION.

16 FURTHER VOIR DIRE BY MR. ROYSTER:

17 Q DR. DAUM, I ASKED YOU AT YOUR DEPOSITION HOW MUCH OF
18 YOUR PRACTICE FOR THE FORENSIC -- OF THE FORENSIC
19 PSYCHOLOGY INVOLVES VALUATION OF SEX OFFENDERS. DO YOU
20 REMEMBER WHAT YOU SAID?

21 A THE EVALUATION OF SEX OFFENDERS, RIGHT.

22 Q HOW MUCH OF YOUR PRACTICE FOR THE FORENSIC PSYCHOLOGY
23 INVOLVES EVALUATIONS OF SEX OFFENDERS?

24 A I DON'T REMEMBER WHAT -- HOW I ANSWERED THAT.
25 WOULD YOU ASK ME THAT AGAIN, BUT ASK IT IN A DIFFERENT

1 WAY. ARE YOU ASKING ME FOR COMMITMENT? ARE YOU ASKING
2 ME FOR HOW TO DETERMINE IF A PERSON HAS A SEX OFFENSE. I
3 AM NOT SURE OR CLEAR ON YOUR QUESTION.

4 Q I ASKED YOU AT YOUR DEPOSITION HOW MUCH OF YOUR
5 PRACTICE FOR THE FORENSIC PSYCHOLOGY INVOLVES EVALUATIONS
6 OF SEX OFFENDERS, AND YOU ANSWERED, I DON'T DO THAT.
7 THERE ARE OTHERS ASSIGNED TO THAT.

8 A THAT IS TRUE. YOU ARE ASKING ABOUT COMMITMENT, YES.
9 I DO NOT DO COMMITMENT IN THE STATE OF KANSAS. OTHER
10 PSYCHOLOGISTS HAVE THAT PARTICULAR POSITION.

11 MR. ROYSTER: JUDGE, WE RENEW OUR OBJECTION.
12 I HAVE HEARD HIM TALK ABOUT TREATMENT, AND I UNDERSTAND
13 THAT KANSAS HAS A CIVIL COMMITMENT PROGRAM AND I
14 UNDERSTAND THAT IT SOUNDS LIKE OCCASIONALLY HE
15 PARTICIPATES IN MEETINGS WHERE THERE ARE DISCUSSIONS, AND
16 I UNDERSTAND HE IS BEING TENDERED AS AN EXPERT IN
17 FORENSIC PSYCHOLOGY, BUT HE IS GOING TO BE ASKED TO OPINE
18 ON A PERSON'S SEXUAL DANGEROUSNESS AND I DO NOT THINK
19 THAT HE HAS BEEN QUALIFIED TO RENDER AN OPINION AS TO
20 THAT ISSUE AT THIS TIME.

21 THE COURT: WELL, I UNDERSTOOD HIS TESTIMONY
22 TO BE THAT HE HAS HELD AT LEAST 60 CASES DURING THAT ONE
23 YEAR PERIOD HE SPOKE ABOUT WHEN HE WAS PART OF THIS GROUP
24 THAT MADE THOSE ASSESSMENTS, THAT HE WAS, IN FACT,
25 INVOLVED IN MAKING PRECISELY THOSE DANGEROUSNESS

1 ASSESSMENTS IN 60 CASES.

2 MR. ROYSTER: I UNDERSTOOD THAT HE SAID THAT
3 WAS PART OF DEVELOPING TREATMENT PLANS, NOT THAT IT WAS A
4 FORENSIC EVALUATION. PERHAPS SOME CLARITY. MAYBE I
5 MISUNDERSTOOD.

6 THE COURT: LET'S SEE WHAT MS. ALLEN HAS TO
7 SAY ABOUT IT.

8 MS. ALLEN: YOUR HONOR, I BELIEVE HIS
9 TESTIMONY IS THERE HAS BEEN A TIME WHEN HE HAS DONE
10 FORENSIC EVALUATIONS AND NOW THERE IS A TIME WHEN HE DOES
11 SOMETHING ELSE, THAT HE HAS A DIFFERENT ROLE AT THE
12 HOSPITAL, BUT THAT HE HAS PERFORMED EVALUATIONS OF THAT
13 KIND IN THE PAST.

14 HE ALSO TESTIFIED THAT HE DOES ACTUARIALS. HE
15 DOES ALL OF THE FORENSIC CONSIDERATIONS THAT DR. PHENIX
16 AND DR. GUTIERREZ HAVE TESTIFIED TO HERE TODAY, AND HE
17 DOES NOT HAVE TO BE AN OFFICIAL FORENSIC EVALUATOR TO
18 QUALIFY AS AN EXPERT TO TESTIFY IN THIS CASE ABOUT SEXUAL
19 DANGEROUSNESS. THAT IS NOT A REQUIREMENT.

20 THE COURT: WELL, I AM CERTAINLY GOING TO
21 ALLOW DR. DAUM TO TESTIFY. I GUESS, OUT OF AN ABUNDANCE
22 OF CAUTION, I WILL RESERVE THE ISSUE ON WHETHER TO
23 RECOGNIZE HIM, ALTHOUGH I DO NOT FIND AT THIS TIME
24 PARTICULARLY PERSUASIVE THE GOVERNMENT'S ARGUMENTS
25 BECAUSE THE STANDARD THAT IS BY EVIDENCE RULE 702,

1 I THINK THE STANDARD THE GOVERNMENT IS HOLDING DR. DAUM
2 TO, ASSUMING IT'S FACTUALLY BASED, AND I AM NOT CONVINCED
3 NECESSARILY THAT IT IS, IS -- DOES NOT ACCURATELY REFLECT
4 THE STANDARD UNDER 702 BECAUSE I MEAN IT EXPRESSLY
5 PROVIDES THAT A WITNESS MAY QUALIFY IN ANY NUMBER OF
6 WAYS, BY KNOWLEDGE, SKILL, EXPERIENCE, TRAINING OR
7 EDUCATION, AND ON THE FACE OF HIS CV, IT'S CLEAR THAT HE
8 HAS HAD -- THAT HE HAS HAD EDUCATION AND THEN THERE ARE
9 MULTIPLE WORKSHOPS AND PROGRAMS DEALING WITH FORENSIC
10 PSYCHOLOGY. HE HAS EXPERIENCE THAT -- IF IT'S NOT
11 PRECISELY THIS CURRENT SETTING THAT WE ARE DEALING WITH,
12 IF THAT IS TRUE, IT CERTAINLY IS IN AN AREA THAT IS VERY
13 VERY CLOSELY RELATED.

14 I WILL RESERVE RULING, BUT I DO HAVE AND AM
15 VERY MUCH SKEPTICAL OF THE GOVERNMENT'S POSITION. I WILL
16 ALLOW HIM TO TESTIFY ON THAT BASIS, AS AN EXPERT IN THE
17 FIELD OF FORENSIC PSYCHOLOGY.

18 MS. ALLEN: THANK YOU, YOUR HONOR.

19 CONTINUED DIRECT EXAMINATION BY MS. ALLEN:

20 Q DR. DAUM, YOU TESTIFIED THAT -- YOU TALKED ABOUT A
21 PROGRAM CALLED PASA?

22 A PASA.

23 Q CAN YOU TELL ME WHAT THAT IS?

24 A THAT IS THE PROGRAM THAT I DEVELOPED FOR THE BUREAU
25 OF PRISONS FOR SEX OFFENDERS THAT WERE RELEASED AFTER

1 SERVING THEIR TIME TO PROVIDE SEX OFFENDER TREATMENT TO
2 THOSE PARTICULAR INDIVIDUALS. ALONG WITH THAT, I DID
3 ALSO -- I THINK IT'S CALLED PRESENTENCE. THESE WOULD BE
4 INDIVIDUALS WHO WERE GETTING READY TO BE SENTENCED, BUT
5 THEY WANTED TO KNOW MORE ABOUT THEM SO THEY ATTENDED
6 THERAPY CLASSES.

7 I ALSO, WITH THE SAME GROUP, HAD STATE PEOPLE THAT
8 WERE PEOPLE COMING OUT OF STATE PRISONS, ALSO
9 PARTICIPATING IN THAT. ALONG WITH THAT, WE HAD FAMILY
10 REUNIFICATION WHERE WE DEVELOPED PROGRAMS FOR THE FAMILY
11 TO MEET AND REUNIFY WITH THEM.

12 WE DEVELOPED A PROGRAM WE CALLED THE CHAPERONE
13 PROGRAM IN WHICH WE FOUND PEOPLE THAT WOULD BE A
14 CHAPERONE TO A PARTICULAR SEXUAL OFFENDER, AND THAT
15 PROVIDED SECURITY FOR BOTH THE PUBLIC AS WELL AS FOR THE
16 OFFENDER.

17 THEN OVER A PERIOD OF TIME, WE REQUIRED THAT THEY
18 WORK IN GROUPS. WE ALSO REQUIRED THAT THEY DO INDIVIDUAL
19 TREATMENT. AND THEN WE ADVISED THE PROBATION OFFICERS
20 AND PAROLE OFFICERS TO COME IN AND SET WITH US AT THAT
21 SAME TIME AND MEET THESE PARTICULAR INDIVIDUALS AND SEE
22 WHAT IS GOING ON WITH THE CURRICULUM.

23 THE CURRICULUM IS MANDATED BY THE BOP. YOU HAVE TO
24 MEET CERTAIN SPECIFICITIES AS FAR AS THE PROGRAM IS
25 CONCERNED. AND THEN THEY REQUIRE WRITTEN REPORTS OVER A

1 PERIOD OF TIME CALLED M-PSYCHOLOGICAL EVALUATIONS ON A
2 PARTICULAR INDIVIDUAL AS HE GOES THROUGH THE TREATMENT
3 PROGRAM.

4 Q HOW LONG DID YOU RUN THAT PROGRAM?

5 A I BELIEVE THREE YEARS.

6 Q HOW MANY PEOPLE -- DO YOU HAVE AN IDEA OF HOW MANY
7 PEOPLE YOU TREATED IN THE PROGRAM OR YOU PROVIDED
8 SERVICES TO?

9 A WE STARTED WITH FIVE, AND I BELIEVE WE GOT UP TO 13
10 OR 14 FROM THE BOP; FOUR OR FIVE FROM THE STATE, AND THEN
11 TWO OR THREE FROM THE LOCAL COUNTY THAT WAS THERE.

12 FROM TIME TO TIME ONE WOULD BE ADDED, ONE WOULD
13 LEAVE THE PROGRAM, EXIT, BECAUSE THEY MOVED OR HAD GONE
14 BACK, BUT IT WAS A GROUP OF ABOUT 15 OR 20 OVER A PERIOD
15 OF TIME.

16 Q WAS THAT PROGRAM SUCCESSFUL?

17 A I HAVE NO REASON TO BELIEVE THAT IT WASN'T. NONE OF
18 THE PEOPLE THAT WE HAD IN THE PROGRAM WAS ARRESTED OR
19 RECIDIVATED.

20 Q AND THAT WAS OVER A THREE YEAR PERIOD?

21 A YES. THAT WAS OVER A THREE YEAR PERIOD.

22 Q NOW, AT THE REQUEST OF THE COURT, DID YOU EXAMINE MR.
23 ANTONE?

24 A I DID.

25 Q AND WHEN DID YOU EXAMINE HIM?

1 A I DATED MY REPORT MARCH 1, 2011.

2 Q WHERE DID YOU EXAMINE HIM?

3 A I EXAMINED HIM AT BUTNER.

4 Q HOW LONG DID YOUR EXAMINATION TAKE?

5 A I WAS WITH HIM FOR FIVE HOURS.

6 Q AND TELL US ABOUT HOW YOU PERFORMED YOUR EVALUATION?

7 A I WANTED TO KNOW FIRST HIS MENTAL STATE, HOW HE WAS.
8 AND I GAVE -- I USED A MNSE MENTAL STATE EXAM TO SEE HOW
9 HE WAS AS FAR AS MENTAL WISE.

10 Q NOW, IS THAT AN EXAM THAT HE TAKES HIMSELF, OR IS
11 THAT SOMETHING THAT YOU ORALLY GIVE TO HIM AND THEN YOU
12 SCORE IT YOURSELF?

13 A YOU ORALLY GIVE IT TO HIM AND SCORE IT YOURSELF.

14 Q HOW DID THAT TEST GO?

15 A I AM SORRY?

16 Q CAN YOU TELL US WHAT RESULTS YOU GOT FROM THAT TEST?

17 A CERTAINLY. HE SCORED 27 OUT OF A POSSIBLE 30 POINTS,
18 AND YOU ARE LOOKING FOR A COGNITIVE DYSFUNCTION, AND HE
19 IS TELLING YOU WITH A SCORE OF THAT THAT HE HAS A GOOD
20 CONNECTION TO REALITY AT THE TIME THAT YOU ARE
21 INTERVIEWING HIM.

22 Q SO THIS TEST IS CALLED THE -- THIS IS THE MNSE?

23 A THAT'S CORRECT.

24 Q AND WHAT WAS IT DESIGNED TO DETERMINE?

25 A IT'S DESIGNED TO DETERMINE IF THERE IS THE PRESENCE

1 OF ANY GROSS COGNITIVE DYSFUNCTION.

2 Q WHY DID YOU PERFORM THAT TEST?

3 A WELL, FOR ME, WHEN I WANT TO KNOW THE STATE OF MIND
4 OF THE CLIENT I AM WORKING WITH. I WANT TO KNOW IF HE IS
5 MENTALLY RETARDED. I WANT TO KNOW IF HE IS PSYCHOTIC. I
6 WANT TO KNOW WHERE HE STANDS OVER A SERIES OF QUESTIONS.
7 I WANT TO CHECK HIS REMOTE MEMORY, HIS LONG TERM AND
8 SHORT TERM MEMORY, AND YOU DO THAT THROUGH A SERIES OF 30
9 QUESTIONS.

10 Q DID THE RESULTS OF THAT TEST RAISE ANY CONCERNS IN
11 YOUR MIND ABOUT MR. ANTONE?

12 A NO, MA'AM. IT SIMPLY TOLD ME THAT HE WAS ABLE TO
13 CONVERSE AND THAT THERE WERE NO GROSS COGNITIVE
14 DEFICIENCIES THERE.

15 Q AND WHAT OTHER TEST DID YOU PERFORM?

16 A I PERFORMED THE NAVACO ANGER SCALE AND PROVOCATION
17 INVENTORY, THE NAVACO.

18 Q NOW, WHAT IS THE NAVACO DESIGNED TO DO?

19 A IT'S A TWO-PART TEST DESIGNED TO ASSESS ANGER AND HOW
20 ANGER PLAYS INTO HIS PSYCHOLOGICAL FUNCTIONING AND THEN
21 BEGIN TO LOOK AND SEE HOW HE -- NOT ONLY THE STATE OF
22 ANGER, BUT HOW HE HANDLES CERTAIN PROVOCATIVE SITUATIONS.

23 Q AND HOW IS THAT TEST GIVEN?

24 A THAT IS A SELF-ADMINISTERED PENCIL, PAPER TEST OVER A
25 SERIES OF QUESTIONS. IT HAS A LIKERT SCALE GIVING YOU

1 THREE AND FOUR DIFFERENT POSSIBILITIES.

2 Q DID YOU HAVE A SCORE SHEET ASSOCIATED WITH THAT TEST?

3 A YES.

4 Q CAN I ASK YOU TO TURN TO WHAT HAS BEEN LABELED
5 RESPONDENT'S EXHIBIT -- IT'S ACTUALLY A DEPOSITION
6 EXHIBIT NUMBER 4.

7 MS. ALLEN: I AM SORRY, YOUR HONOR. I THINK I
8 MIGHT NEED TO REFERENCE A DIFFERENT NUMBER. I AM TRYING
9 TO FIGURE THAT OUT NOW.

10 Q I HAVE PLACED ON THE ELMO WHAT HAS BEEN MARKED
11 DEPOSITION EXHIBIT NUMBER 4. DR, DAUM WOULD LOOKING AT
12 YOUR SCORE SHEET HELP YOU TO ILLUSTRATE YOUR TESTIMONY
13 HERE TODAY?

14 A YES, MA'AM.

15 Q DO YOU RECOGNIZE WHAT IS ON THE MONITOR?

16 A I DO.

17 Q WHAT IS THAT?

18 A THAT IS THE RESULT OF THE NAVACO. IF YOU LOOK AT THE
19 BOTTOM, IT IS GIVING YOU THE RAW SCORE AND THEN IT'S --
20 THE RAW SCORE IS CONVERTED INTO T-SCORES, AND OVER THE
21 T-SCORES MEANS IT WILL DESIGNATE CATEGORIES FOR THE
22 VARIOUS AREAS OF ANGER.

23 HIS OVERALL SCORE OF 48 T-SCORE PUT HIM IN AN
24 AVERAGE CATEGORY AS FAR AS THE HOW HE CARRIES ANGER WHICH
25 WOULD INDICATE THAT HE EXPERIENCES ANGER JUST ABOUT THE

1 SAME WAY THAT OTHER PEOPLE DO.

2 IF YOU LOOK AT THE COGNITIVE PART, IT SHOWS A
3 T-SCORE OF 48 WHICH PUTS HIM IN AN AVERAGE CATEGORY OF
4 HOW HE THINKS ABOUT ANGER, HOW HE PROCESSES SITUATIONS IN
5 WHICH ANGER WOULD BE EXPRESSED.

6 IF YOU LOOK AT THE REGULATION OR REGULATORY COLUMN,
7 YOU WILL SEE THAT THAT SCORE, THAT T-SCORE IS HIGH OF 61,
8 AND THAT IS INDICATING THAT HE HAS ACQUIRED THOSE SKILLS
9 TO PROCESS HIS ANGER IN AN APPROPRIATE MANNER.

10 Q NOW, HOW DID YOU ARRIVE AT THESE SCORES?

11 A THE SCORES ARE TAKEN AND THEY COME OFF OF A SHEET
12 LIKE THAT, YES.

13 Q I HAVE TURNED TO PAGE 2 WHICH IS NOW DISPLAYED ON THE
14 MONITOR.

15 A THAT IS THE TEST ITSELF. THAT IS THE PROTOCOL
16 ITSELF.

17 Q WITHOUT GOING ON EACH LINE ITEM, CAN YOU GIVE ME ONE
18 OR TWO SAMPLES OF WHAT KIND OF QUESTIONS MR. ANTONE WAS
19 ASKED TO RESPOND TO?

20 A SURE. THE KINDS OF QUESTIONS WOULD BE WHEN SOMETHING
21 IS WRONG THAT IS DONE TO ME, I AM GOING TO GET ANGRY, AND
22 I HAVE A CHOICE OF NEVER, TRUE, SOMETIMES TRUE, OR ALWAYS
23 TRUE.

24 OR A QUESTION LIKE WHEN I HAVE A CONFLICT WITH
25 SOMEONE, I SPEAK TO THAT PERSON ABOUT THE PROBLEM. AND

1 AGAIN, THAT IS NEVER TRUE, SOMETIMES TRUE, OR ALWAYS
2 TRUE.

3 AND THEN THE SECOND PART OF THAT IS HE IS GIVEN
4 SITUATIONS AND ASKED TO ASSESS TO WHAT DEGREE OF ANGER HE
5 NORMALLY FEELS, NORMALLY EXPERIENCES. AND FOR INSTANCE,
6 YOU MAKE PLANS TO DO SO SOMETHING WITH A PERSON WHO BACKS
7 OUT AT THE LAST MINUTE. DOES THAT MAKE YOU NOT AT ALL
8 ANGRY, A LITTLE ANGRY, FAIRLY ANGRY OR VERY ANGRY.

9 OR BEING CRITICIZED IN FRONT OF OTHER PEOPLE FOR
10 SOMETHING THAT YOU HAVE DONE. NOT AT ALL ANGRY, A LITTLE
11 ANGRY, FAIRLY ANGRY, OR VERY ANGRY. THOSE ARE THE SAMPLE
12 QUESTIONS.

13 Q THE RESULTS OF THE TEST, YOU COMMENTED -- YOU
14 TESTIFIED WHILE WE LOOKED AT THE SCORING SHEET THAT THE
15 SCORES WERE AVERAGE?

16 A YES.

17 Q AND I SEE AN "A", "B" -- I BELIEVE IS THAT "A, B, C"
18 OR "A,B, G" BELOW EACH ONE?

19 A THAT IS "A, B, E" OR "A, B, M" FOR AVERAGE.

20 Q SO, WHAT IS YOUR OPINION WITH REGARD TO HOW MR.
21 ANTONE HANDLES ANGER BASED UPON THIS TEST?

22 A HOW HE SHOWED HIMSELF IS HE HANDLES ANGER
23 APPROPRIATELY.

24 Q NOW, WOULD SOMEONE WITH AN ANGER MANAGEMENT PROBLEM
25 HAVE SCORED DIFFERENTLY?

1 A MOST OF THE TIME, YES.

2 Q WHAT OTHER TESTS DID YOU PERFORM WHEN YOU EVALUATED
3 MR. ANTONE?

4 A I --

5 Q DID YOU PERFORM THE MNSOST?

6 A I PERFORMED THE MNSOST.

7 Q WHAT WAS YOUR SCORE ON THE MNSOST FOR MR. ANTONE?

8 A 11.

9 Q DO YOU RECALL WHAT DR. PHENIX'S SCORE WAS ON THE
10 MNSOST FOR MR. ANTONE?

11 A 13, AND THEN COMING DOWN.

12 Q WOULD YOU SAY THERE WAS ANY APPRECIABLE DIFFERENCE
13 BETWEEN YOUR SCORING AND HER SCORING ON THE MNSOST?

14 A NO, BECAUSE AS I LISTENED TO THE CLARIFICATION OF
15 SOME OF THE INFORMATION I WAS GIVEN, THAT CHANGED SOME
16 SCORES.

17 IF YOU WILL NOTICE ON MY REPORT, I AM SHOWING A 4 ON
18 THE WRITTEN, BUT THE DOCUMENTATION I SUBMITTED SHOWED A
19 13, I BELIEVE.

20 Q SO THAT WAS A TYPO THEN?

21 A YES. THAT WAS A TYPO.

22 MS. ALLEN: YOUR HONOR, I WANTED TO DIRECT YOU
23 TO PAGE 7 OF DR. DAUM'S REPORT WHICH IS EXHIBIT NUMBER --
24 RESPONDENT'S EXHIBIT NUMBER 1.

25 Q JUST TO CLARIFY, YOUR OFFICIAL SCORE ON THE MNSOST

1 WAS, IN FACT, AN 11, AND NOT A 4, AND WHAT WE SEE IN THE
2 REPORT IS A TYPO; IS THAT RIGHT?

3 A THAT'S CORRECT.

4 Q SO IS IT YOUR OPINION THAT YOUR SCORE ON THE MNSOST
5 AND DR. PHENIX'S SCORE ON THE MNSOST DID NOT VARY WITH
6 MUCH SIGNIFICANCE?

7 A NO, MA'AM. WELL, YES, MA'AM, THAT IS MY TESTIMONY.
8 WHEN YOU LOOK AT -- WHEN YOU LOOK AT THE EFFECT SIDE, NO,
9 MA'AM, IT'S THE SAME.

10 Q NOW, HOW OFTEN DO YOU USE THE MNSOST, DR. DAUM?

11 A I DON'T ANYMORE.

12 Q WHY DON'T YOU USE THE MNSOST ANYMORE?

13 A BECAUSE IN OUR MEETINGS, WE HAVE DISCUSSED AND WE
14 HAVE HAD PEOPLE COME IN. --

15 MR. ROYSTER: OBJECTION. HEARSAY.

16 THE COURT: OBJECTION OVERRULED.

17 THE WITNESS:

18 A WE HAVE HAD TRAINING THAT IT HAS TOO HIGH OF A FALSE
19 POSITIVE PREDICTIVE POWER, AND THAT IT HASN'T BEEN
20 UPDATED, SO IN OUR AREA, WE NO LONGER USE THE MNSOST.

21 Q AND WHEN YOU SAY IN OUR AREA, YOU ARE REFERRING TO
22 WHO?

23 A I AM REFERRING TO LARNED.

24 Q TO LARNED STATE HOSPITAL?

25 A TO LARNED STATE HOSPITAL.

1 THE COURT; DR. DAUM, IF I COULD JUST ASK ONE
2 FOLLOW UP ABOUT THIS TYPOGRAPHICAL ERROR IN YOUR REPORT
3 ON PAGE 7. DID I UNDERSTAND CORRECTLY -- IT DOES READ 4,
4 AND I AM LOOKING AT THE THIRD LINE UNDER THE HEADING THAT
5 READS ACTUARIAL RESULTS. IT SAYS MR. ANTONE SCORED A 4,
6 BUT THAT SHOULD READ 11?

7 THE WITNESS: YES, SIR. THAT IS WHAT I AM
8 TRYING TO SAY.

9 THE COURT: OKAY. WHAT I WANTED TO MAKE SURE
10 WAS THAT THE PERCENTAGES THAT FOLLOW IN THAT PARAGRAPH 19
11 TO 46 PERCENT, THOSE APPLY TO A SCORE OF 11?

12 THE WITNESS: NO. THEY APPLY TO THE 4, AND IF
13 I CAN EXPLAIN THAT AS WE GO THROUGH.

14 THE COURT: OKAY. WELL, THAT IS AN AREA
15 THAT -- I WILL LET YOU HANDLE THAT, MS. ALLEN, BUT THAT
16 IS WHAT I AM NOT CLEAR ABOUT. I MEAN, HE HAS CLARIFIED
17 IT, BUT THESE PERCENTAGES DO NOT APPLY TO AN 11, AND I AM
18 GOING TO NEED TO HEAR MORE ABOUT THAT.

19 MS. ALLEN:

20 Q DR. DAUM, IF YOU CAN EXPLAIN FOR US WHAT HAPPENED
21 WITH YOUR SCORING THERE?

22 A WELL, WHAT I WAS LOOKING AT, I DON'T REALLY KNOW --
23 DO YOU JUST WANT TO GO THROUGH IT, OR HOW DO YOU WISH TO
24 DO THIS?

25 Q IT WAS NOT MY INTENTION TO GO THROUGH EACH ONE, BUT

1 WE CERTAINLY CAN, YOUR HONOR, IF YOU BELIEVE THAT WOULD
2 BE HELPFUL.

3 THE COURT: NO, MA'AM. MY CONCERN IS THAT --
4 IT SOUNDS ALTHOUGH IT HAS BEEN CHARACTERIZED AS A
5 TYPOGRAPHICAL ERROR OF ONE NUMBER, IT SOUNDS LIKE IT'S
6 MORE THAN THAT. IF THE PERCENTAGES GIVEN HERE IN THE
7 MNSOST-R PARAGRAPH HERE ARE NOT ACCURATE, IF 19 TO 46
8 PERCENT DOES NOT APPLY TO THE SCORE OF 11, THEN THAT IS
9 MORE THAN JUST A SIMPLE TYPOGRAPHICAL ERROR FOR BEING 11,
10 SO --

11 THE WITNESS: YOUR HONOR --

12 THE COURT: AND SO I RAISE THE ISSUE. I CAN
13 ASK QUESTIONS LATER IF YOU DON'T CARE TO.

14 MS. ALLEN: I UNDERSTAND THE CONFUSION, YOUR
15 HONOR. IF I CAN HAVE JUST A MOMENT. I AM TRYING TO
16 LOCATE MY SCORE SHEET.

17 THE COURT: YOU MAY. WHY DON'T WE TAKE OUR
18 AFTERNOON BREAK AND WE'LL RECONVENE AT 3:15.

19 (WHEREUPON, A SHORT RECESS WAS TAKEN.)

20 MR. ROYSTER: JUDGE --

21 THE COURT: MR. ROYSTER.

22 MR. ROYSTER: I WOULD LIKE TO BRING SOMETHING
23 TO THE COURT'S ATTENTION THAT I THINK IS IMPORTANT THAT
24 WE ADDRESS RIGHT NOW. DR. DAUM TESTIFIED THAT THE FOUR
25 IS A TYPOGRAPHICAL ERROR, THAT HIS SCORE SHOULD BE AN 11,

1 AND I WANT THIS COURT TO KNOW BEFORE WE GO ANY FURTHER
2 THAT WHEN I TOOK HIS DEPOSITION, I WALKED THROUGH EACH
3 AND EVERY ITEM, AND WE HAVE A SCORING SHEET AND I CAN
4 MAKE THAT AVAILABLE TO THE COURT AS PART OF HIS
5 DEPOSITION, AND IT EQUATES -- IT ALL EQUALS UP TO THE
6 NUMBER 4, SO CLEARLY THERE MAY BE A CHANGE IN THE
7 SCORING. I UNDERSTAND THAT, BUT FOR HIM TO TESTIFY THAT
8 THIS WAS A TYPOGRAPHICAL ERROR, I THINK NOW GOES TO NOT
9 ONLY HIS CREDIBILITY BEFORE THIS COURT, BUT POTENTIALLY
10 HIS QUALIFICATIONS TO TESTIFY AS AN EXPERT IN THIS CASE.
11 AND BEFORE WE GO ANY FURTHER, I WANTED TO COURT TO BE
12 AWARE OF THAT.

13 THE COURT: YOU WILL HAVE A CHANCE TO
14 CROSS-EXAMINE MR. DAUM.

15 MS. ALLEN.

16 MS. ALLEN: YOUR HONOR, DO YOU WANT ME TO GO
17 FORWARD WITH THE QUESTIONING AT THIS POINT?

18 THE COURT: PLEASE.

19 Q DR. DAUM, WITH REGARD TO THE MNSOST, WE HAVE SOME
20 CONFUSION, AND YOU HAVE HAD A CHANCE TO LOOK OVER YOUR
21 SCORE SHEET. PRIOR TO THE BREAK YOU TESTIFIED THAT THE
22 SCORE OF -- YOU INITIALLY TESTIFIED THAT YOUR SCORE WAS
23 SIMILAR TO DR. PHENIX'S; IS THAT RIGHT?

24 A YES.

25 Q AND YOU SAID THAT YOUR SCORE WAS AN 11; IS THAT

1 RIGHT?

2 A THAT'S CORRECT.

3 Q AND I THINK YOU ALSO SAID THAT SOME OF -- SOME OF THE
4 CHANGE WAS BASED ON WHAT YOU HAD HEARD HERE?

5 A THAT'S CORRECT.

6 Q THEN WE WENT ON BREAK BECAUSE WE WERE TRYING TO
7 DETERMINE ABOUT THE PERCENTAGES?

8 A YES, MA'AM.

9 Q WHEN YOU TESTIFIED THAT THE SCORE OF 4 IN YOUR REPORT
10 WAS TYPOGRAPHICAL, WHAT DID YOU MEAN?

11 A I MEANT THAT AT THE TIME WHEN I SUBMITTED THIS IT WAS
12 A 4. BASED UPON WHAT I HAVE HEARD THE LAST TWO DAYS, IT
13 CHANGED.

14 Q SO WHEN YOU USE THE WORD TYPOGRAPHICAL, WHY DID YOU
15 CHOOSE THAT WORD? WHAT DID YOU MEAN BY THAT WORD?

16 A WHAT I MEANT WAS AT THE TIME THAT -- AT THE TIME OF
17 THIS REPORT, THIS WAS VALID WITH THE INFORMATION I HAD.
18 WHAT I MEAN IS THAT AT THE TIME NOW, THIS REPORT IS NOT
19 VALID BECAUSE OF INFORMATION THAT HAS BEEN DISCLOSED IN
20 THE COURT.

21 Q SO, WOULD YOU BE -- IS IT YOUR TESTIMONY THAT BASED
22 UPON WHAT YOU HAVE HEARD, YOU ARE ADJUSTING THE SCORE?

23 A THAT'S CORRECT.

24 Q WOULD THE WORD "MISTAKE" HAVE BEEN PROBABLY A BETTER
25 WORD TO USE THAN "TYPOGRAPHICAL"?

1 A PROBABLY, YES. THANK YOU.

2 Q WHY WOULD YOU TERM WHAT YOU HAVE DOWN THERE AS A
3 MISTAKE?

4 A BECAUSE AT THE TIME THAT I AM TESTIFYING, THIS
5 INSTRUMENT IS NO LONGER VALID THE WAY IT WAS PRESENTED AT
6 THE TIME IT WAS PRESENTED TO THE COURT.

7 Q YOU ALSO TESTIFIED ABOUT THE MNSOST RIGHT BEFORE OUR
8 BREAK. YOU SAID THAT YOU NO LONGER USE THE TEST.

9 A THAT'S CORRECT.

10 Q WHEN DID YOU STOP USING THE MNSOST?

11 A THREE OR FOUR WEEKS AGO.

12 Q AND BASED UPON WHAT -- WHY DID YOU STOP USING THE
13 MNSOST?

14 A WE ATTENDED A TRAINING BY ANN PSALTER THAT BEGAN TO
15 SHOW US HOW TO LOOK AT BASE RATES, FALSE AND NEGATIVE
16 POSITIVES, AND WE DISCUSSED THE ISSUE THAT THE
17 RELIABILITY OF THE MNSOST HAS BEEN LOOKED AT AS A (POINT)
18 .45. IT HAS HIGH RELIABILITY.

19 HOWEVER, IT ALSO HAS A PROCLIVITY TO GIVE A HIGH
20 RATE OF FALSE POSITIVES, MEANING THAT THE -- OF THE
21 NUMBER IT SAYS THAT MEET CRITERIA OR THAT ARE IN A 6 OR A
22 7, THAT THERE IS MORE FALSE POSITIVES IN THAT THAN THERE
23 SHOULD BE.

24 Q WHEN YOU SCORE AN ACTUARIAL, WHAT INFORMATION DO YOU
25 USE?

1 A STATIC INFORMATION

2 Q SO YOU ONLY USE WHAT HAS BEEN GIVEN TO YOU?

3 A YES.

4 Q SO YOU TESTIFIED TODAY THAT YOUR SCORE CHANGED
5 BECAUSE NEW INFORMATION WAS PROVIDED TO YOU?

6 A YES.

7 Q AND HOW WAS THAT PROVIDED TO YOU?

8 A IN LISTENING IN THE COURT.

9 Q SO WERE YOU HERE YESTERDAY WHEN DR. PHENIX TESTIFIED
10 ABOUT HER MNSOST SCORE?

11 A YES.

12 Q DO YOU RECALL HER CHANGING HER SCORE AS WELL?

13 A YES.

14 Q WHEN SHE WAS TESTIFYING?

15 A YES.

16 Q SO IS IT YOUR TESTIMONY THAT YOU HAVE MADE AN
17 ADJUSTMENT TO YOUR SCORE BASED UPON NEW INFORMATION
18 GLEANED FROM THIS CIVIL COMMITMENT HEARING?

19 A THAT'S CORRECT.

20 Q THANK YOU. LET'S MOVE ON TO THE STATIC-99R. YOU
21 SCORED THAT TEST, AND I WOULD LIKE YOU TO TELL ME WHAT
22 YOUR SCORE WAS?

23 A CAN YOU SHOW ME WHERE THAT IS IN THE BOOK, PLEASE?

24 Q YES. JUST A MOMENT. RESPONDENT'S NUMBER 1, PAGE 12.
25 WE ARE LOOKING AT WHAT IS CALLED THE STATIC-99R CODING

1 FORM. HAVE YOU FOUND IT?

2 A NO, MA'AM, I HAVEN'T.

3 Q YOU TURN HALFWAY THROUGH THE BINDER. THAT IS WHERE
4 THE RESPONDENT'S EXHIBITS START. IT'S THE SECOND SET OF
5 EXHIBITS.

6 A NO. I AM LOST.

7 THE COURT: MS. ALLEN, YOU MAY APPROACH TO
8 ASSIST THE WITNESS.

9 MS. ALLEN: THANK YOU. YOUR HONOR, I HAVE
10 JUST HANDED DR. DAUM WHAT HAS BEEN MARKED AS DEFENDANT'S
11 EXHIBIT NUMBER 1.

12 Q DR. DAUM, DO YOU RECOGNIZE THAT?

13 A YES.

14 Q WHAT IS THAT?

15 A THAT IS MY REPORT TO THE COURT.

16 Q CAN YOU TURN TO THE LAST PAGE AND TELL ME WHAT YOU
17 SEE ON PAGE 12?

18 A THAT IS A STATIC-99 CODING FORM.

19 Q DID YOU COMPLETE THIS FORM IN YOUR EXAMINATION OF MR.
20 ANTONE?

21 A I DID.

22 Q HOW DID YOU GO ABOUT COMPLETING THIS FORM?

23 A I LOOKED AT DOCUMENTATION THAT ADDRESSED THESE
24 PARTICULAR STATEMENTS.

25 Q AND HOW DID YOU -- WHAT IS YOUR TOTAL SCORE ON THIS

1 FORM?

2 A 2, 3, 4.

3 Q A SCORE OF 4?

4 A 4.

5 Q IS THAT NOTED ON YOUR FORM?

6 A IT IS.

7 Q AND WHERE IS IT NOTED ON YOUR FORM, DR. DAUM?

8 A NEXT TO EACH PARTICULAR ITEM.

9 Q SO OUTSIDE OF THE CHART, TO THE RIGHT OF THE CHART,
10 ARE THOSE YOUR SCORES?

11 A YES, THEY ARE.

12 Q AND YOU REACHED A TOTAL SCORE BY ADDING UP THAT
13 COLUMN ON THE OUTSIDE?

14 A YES, I DID.

15 Q SO IT'S YOUR TESTIMONY THAT YOUR SCORE IS A 4 ON THE
16 STATIC-99R?

17 A YES. THAT'S CORRECT.

18 MS. ALLEN: YOUR HONOR, I HAVE PLACED THE
19 STATIC-99R CODING FORM ON THE MONITOR.

20 THE COURT: THANK YOU.

21 MS. ALLEN:

22 Q DO YOU RECALL THAT DR. GUTIERREZ AND DR. PHENIX HAD
23 SCORES OF 4 OR 5 ON THIS STATIC-99?

24 A YES, I DO.

25 Q DO YOU AGREE WITH THEIR CALCULATIONS OF THE

1 STATIC-99R?

2 A YES, MA'AM.

3 Q SO THERE IS NO DIFFERENCE IN HOW YOU SCORED THIS ONE
4 VERSUS HOW THEY DID?

5 A NO, BECAUSE YOU ARE LOOKING AT STATIC INFORMATION.

6 Q LET ME BACK UP A MINUTE, DR. DAUM. IF WE COULD
7 REFLECT ON DR. GUTIERREZ'S SCORE, DO YOU REMEMBER HOW HE
8 SCORED THE STATIC-99R?

9 A DID HE DO A 6?

10 Q THAT'S CORRECT. DO YOU RECALL WHAT THE DIFFERENCE
11 WAS IN HIS SCORING SHEET VERSUS YOURS?

12 A NO, I DON'T.

13 Q LET ME DIRECT YOUR ATTENTION TO QUESTION NUMBER 5.
14 DO YOU REMEMBER EARLIER TESTIMONY ABOUT THE CALCULATION
15 OF PRIOR SEX OFFENSES?

16 A YES.

17 Q HOW DID YOU ACTUALLY CALCULATE YOUR ITEM NUMBER 5?

18 A IF YOU LOOK AT -- IF YOU LOOK AT CHARGES, CONVICTIONS
19 3 TO 5, CONVICTIONS 2 TO 3, YOU GET A SCORE OF 2.

20 Q DO YOU RECALL DR. PHENIX SCORING THE SAME TEST WITH A
21 SCORE OF 5?

22 A YES. I THINK I DO. I HEARD HER SAY THAT.

23 Q DO YOU AGREE THAT THE STATIC-99R SCORE FOR MR. ANTONE
24 IS SOMEWHERE BETWEEN A 4 AND A 5?

25 A YES, MA'AM.

1 Q DO YOU AGREE WITH THE EARLIER TESTIMONY THAT HIS
2 SCORE WOULD IN FACT DECREASE BY ONE POINT WHEN HE TURNS
3 40 NEXT MAY OF 2012?

4 A YES, ACCORDING TO THE PROTOCOL.

5 Q IS THAT SOMETHING THAT YOU WOULD CONSIDER IN YOUR
6 EVALUATION AT THIS TIME, OR WOULD YOU HAVE TO WAIT UNTIL
7 HIS ACTUAL BIRTHDAY TO DO THAT?

8 A WELL, I SCORED A ZERO WITH THAT BECAUSE OF THE AGE,
9 BUT IN ACTUAL -- IN LOOKING AT THE CLINICAL JUDGMENT PART
10 OF THAT, I THINK THAT WOULD CERTAINLY BE PART OF THAT.
11 ONE OF THE ISSUES IS THAT YOU DON'T REALLY KNOW WHEN HE
12 IS GOING TO BE RELEASED.

13 IF IT'S SHORTLY, THAT WOULD BE ONE THING. IF IT'S
14 MUCH LONGER, THAT WOULD BE SOMETHING ELSE. BUT YOU
15 WOULDN'T -- I DON'T THINK YOU WOULD SCORE IT RIGHT NOW,
16 TODAY, BECAUSE HE DOESN'T QUALIFY FOR THAT.

17 Q IF YOU SCORED THE TEST IN MAY OF 2012 FOR A CIVIL
18 COMMITMENT HEARING IN MAY OF 2012, HOW WOULD YOU SCORE
19 IT?

20 A IF HE WAS AGE 40 TO 59, I WOULD GIVE HIM MINUS ONE.

21 Q AND THEN THE TOTAL SCORE WOULD BE WHAT?

22 A 3.

23 Q SINCE WE ARE NOT THERE, YOUR TESTIMONY TODAY IS THAT
24 YOUR SCORE IS A 4; IS THAT CORRECT?

25 A THAT'S CORRECT.

1 Q WHAT RISK CATEGORY DOES THAT PLACE HIM IN FOR THE
2 STATIC-99 RECIDIVISM RATES?

3 A OVER A 4 OR 5, IT PUTS HIM IN A MODERATE TO HIGH
4 CATEGORY.

5 Q DID YOU COMPARE HIM TO A SAMPLE GROUP?

6 A I DID. YES, I DID.

7 Q NOW, WHAT DOES THAT MEAN WHEN YOU COMPARE HIM TO A
8 SAMPLE GROUP? WHAT ARE YOU DOING WHEN YOU ARE DOING
9 THAT?

10 A YOU ARE LOOKING AT RESEARCH WHERE SAMPLE GROUPS HAVE
11 BEEN PUT TOGETHER FROM PEOPLE THAT HAVE GONE THROUGH THIS
12 AND HAVE RECIDIVATED, SO YOU WILL HAVE A SAMPLE GROUP OF
13 PERHAPS 2,000, 4,000, AND THEN BASED UPON THAT, YOU
14 ESTABLISH A BASE RATE. BASED UPON THE BASE RATE, THEN
15 YOU CAN ESTABLISH A POSSIBILITY OF RECIDIVATING BETWEEN
16 FIVE YEARS AND TEN YEARS.

17 Q NOW, WHAT WAS THE -- YOU PLACED HIM -- WHAT SAMPLE
18 GROUP DID YOU COMPARE HIM TO?

19 A I COMPARED HIM --

20 Q PAGE 7?

21 A YES. I COMPARED HIM TO THE MANY -- I COMPARED HIM TO
22 THE HIGH RISK, HIGH NEED GROUP.

23 Q WHAT WERE THE PREDICTIVE RISK VALUES THAT YOU GOT
24 WHEN YOU COMPARED HIM TO THOSE?

25 A INDIVIDUALS THAT OBTAINED A SCORE SIMILAR TO MR.

1 ANTONE, OF THOSE 12.3 PERCENT MAY REOFFEND WITHIN FIVE
2 YEARS. AND 18.2 MAY REOFFEND WITHIN TEN YEARS.

3 Q DOES THAT MEAN THAT MR. ANTONE WILL REOFFEND?

4 A NO. IT MEANS THAT HE HAS BEEN PLACED IN A GROUP
5 WITHIN WHICH THAT GROUP, 12.3 PERCENT HAS BEEN KNOWN TO
6 REOFFEND. THAT IS PREDICTED OVER -- AFTER FIVE YEARS.

7 Q DOES THAT MEAN THAT HE IS IN THAT 12.3 PERCENT?

8 A NO. THE TROUBLE WITH ACTUARIALS IS YOU DON'T KNOW
9 WHERE THEY ARE AT. ALL YOU KNOW IS THEY ARE WITHIN A
10 GROUP THAT HAS BEEN PRESELECTED. THE NUMBER OF -- THE
11 NUMBER FROM THAT GROUP PRESELECTED FOR TREATMENT NEED IS
12 WITHIN 13.3 TO 18.2 OVER FIVE TO TEN YEARS.

13 Q BASED UPON THE DATA THAT YOU COLLECTED WHICH YOU
14 HEARD HERE TODAY AND YESTERDAY, AND BASED UPON YOUR
15 EXPERIENCE AND TRAINING AND EDUCATION, DO YOU HAVE AN
16 OPINION AS TO WHETHER MR. ANTONE MEETS CRITERIA FOR CIVIL
17 COMMITMENT AS A SEXUALLY DANGEROUS PERSON?

18 A IN MY OPINION HE DOES NOT, NO.

19 Q CAN YOU TELL US A LITTLE ABOUT YOUR DIAGNOSTIC
20 CONCLUSIONS?

21 A WELL, MR. ANTONE HAS A PERSONALITY DISORDER. HE ALSO
22 HAS A PARAPHILIA. HE ALSO HAS A POLYSUBSTANCE
23 DEPENDENCE. IN LOOKING AT IT OVERALL, IN MY OPINION, IF
24 YOU LOOK AT WHAT DRIVES THE MAN, YOU CAN LOOK AT THE
25 POLYSUBSTANCE DEPENDENCE AND YOU CAN LOOK AT HIS

1 BORDERLINE PERSONALITY DISORDER.

2 Q WELL, START WITH POLYSUBSTANCE DEPENDENCE. WHAT IS
3 POLYSUBSTANCE DEPENDENCE? WHAT IS THIS AND WHAT DID YOU
4 BASE YOUR DIAGNOSIS ON?

5 A THAT MEANS OVER A PERIOD OF TIME THAT WHAT HE HAS
6 DONE IS HE HAS TAKEN -- HE HAS ABUSED AND BECOME
7 DEPENDENT ON THREE DIFFERENT CATEGORIES OF DRUGS. IN
8 THIS INSTANCE, ALCOHOL, CANNABIS, COCAINE AND
9 HALLUCINOGENS, AND SO OVER A PERIOD OF TIME, HE HAS
10 BECOME DEPENDENT ON THOSE DRUGS.

11 Q AND WHAT ABOUT THE NEXT ONE; FROTTEURISM?

12 A FROTTEURISM.

13 Q WHAT IS THAT, AND WHAT IS YOUR BASIS FOR THIS
14 DISORDER?

15 A FROTTEURISM IS A DIAGNOSIS DESIGNED AS WAS TESTIFIED
16 EARLIER BY MR. GUTIERREZ, THAT IT NORMALLY HAPPENS IN A
17 PUBLIC PLACE. IT'S UNWANTED TOUCHING FROM ONE INDIVIDUAL
18 TO ANOTHER.

19 BUT IT DOESN'T MEAN JUST THAT. IT REALLY MEANS IT'S
20 AN UNWANTED TOUCHING OR RUBBING OF ANY PART OF AN
21 INDIVIDUAL THAT DOESN'T WANT TO BE RUBBED OR TOUCHED.

22 IN THE INSTANCE THAT YOU HAD MR. ANTONE, THAT IS
23 EXACTLY WHAT HE DID. HE RUBBED WHERE THE PEOPLE DID NOT
24 WANT TO BE RUBBED. HE TOUCHED WHERE THEY DID NOT WANT TO
25 BE TOUCHED. ALSO, AT THE SAME TIME, HE RAPED.

1 Q WOULD THE RAPE BE PART OF THE FROTTEURISM DIAGNOSIS?

2 A NO.

3 Q IS RAPE LISTED IN THE DSM?

4 A NO.

5 Q IS FROTTEURISM IN THE DSM?

6 A YES.

7 Q SO YOUR BASIS FOR THE FROTTEURISM DIAGNOSIS IS THE
8 UNWANTED TOUCHING AS WELL AS THE RAPE, THE PRIOR RAPE?

9 A THE ISSUE IS IF MR. ANTONE HAD SEXUALLY OFFENDED
10 CHILDREN UNDER THE AGE OF 12, 10, OR 9, THAT WOULD BE --
11 HE WOULD QUALIFY FOR A DEFINITION OF PEDOPHILIA. THAT IS
12 EASY TO DIAGNOSE. BUT WHAT HE DID IS HE ABUSED, SEXUALLY
13 ABUSED PUBESCENT WOMEN AND OLDER WOMEN, AND THAT IS HARD
14 TO DIAGNOSE.

15 DR. GUTIERREZ USES A TERM HEBEPHILIA, AND THAT IS
16 CERTAINLY WITHIN THE FIELD, PEOPLE USE THAT TERM, AND IT
17 DESIGNATES A CERTAIN CATEGORY OF ACTIONS.

18 OTHER PSYCHOLOGISTS DO NOT RECOGNIZE THAT TERM AND
19 IT'S VERY DIFFICULT TO DIAGNOSE THAT PARTICULAR ACTION.

20 IN MR. ANTONE'S CASE, THE RAPE BECOMES A CRIMINAL
21 ACT. AND I UNDERSTAND THAT THROUGH A BORDERLINE
22 PERSONALITY AND ANTISOCIAL.

23 Q WHAT IS BORDERLINE PERSONALITY DISORDER WITH
24 ANTISOCIAL FEATURES?

25 A BORDERLINE PERSONALITY DISORDER IS AN INDIVIDUAL WHO

1 DOES ANTISOCIAL PERSONALITY THINGS, BUT HE GETS SOMETHING
2 FROM IT. HE DOES IT BECAUSE HE NEEDS TO. AN ANTISOCIAL
3 DOES THE SAME THINGS, BUT HE DOES IT BECAUSE HE CAN.

4 MAY I GIVE YOU SOME DESCRIPTORS ON THAT?

5 Q WELL, JUST TO CLARIFY, YOU ARE SAYING IT'S THE SAME
6 ACTION, BUT FOR A DIFFERENT REASON?

7 A I AM SAYING THAT THERE ARE OVERLAPPING ACTIONS FOR
8 DIFFERENT REASONS.

9 Q OKAY. PLEASE EXPLAIN.

10 A BORDERLINE PERSONALITY DISORDER BY THE DSM-IV TALKS
11 ABOUT A PATTERN OF UNSTABLE AND INTENSE INTERPERSONAL
12 RELATIONSHIPS. THE FOCUS IS ON SOCIAL INTERACTION,
13 INAPPROPRIATE. IT TALKS ABOUT DISTURBANCE IN TWO AREAS,
14 SEX, SUBSTANCE ABUSE, RECKLESS DRIVING, AND BINGE
15 DRINKING. HE MEETS CRITERIA FOR BOTH OF THOSE AS FAR AS
16 SEXUAL IMPULSIVITY AND SUBSTANCE ABUSE. IT TALKS ABOUT
17 RECURRENT SUICIDAL BEHAVIOR, GESTURES. HE MEETS THE
18 CRITERIA FOR THAT. IT TALKS ABOUT AN EFFECTIVE
19 INSTABILITY OF MOOD, MARKED REACTIVITY OF MOOD. HE MEETS
20 THAT DIAGNOSIS FOR THAT.

21 CHRONIC FEELINGS OF EMPTINESS. HE TALKED ABOUT THAT
22 IN OUR INTERVIEW, ABOUT NOT FEELING LIKE THERE IS ANYBODY
23 THERE FOR ME. LIKE HE FEELS LONELY INSIDE, LIKE HE IS
24 EMPTY.

25 INAPPROPRIATE AND INTENSE ANGER. DIFFICULTY

1 CONTROLLING ANGER. HE DOES NOT MEET CRITERIA FOR THAT.

2 NOW, FOR ANTISOCIAL, IT TALKS ABOUT FAILURE TO

3 CONFORM TO SOCIAL NORMS. HE MEETS CRITERIA FOR THAT.

4 IMPULSIVITY OR FAILURE TO PLAN AHEAD. HE MEETS CRITERIA
5 FOR THAT.

6 A RECKLESS DISREGARD FOR SAFETY FOR HIMSELF AND FOR
7 OTHERS. HE MEETS CRITERIA FOR THAT. NOW, WHEN YOU PUT
8 BOTH OF THOSE TOGETHER, THERE IS A REASON WHY HE IS DOING
9 THAT. IT'S NOT BECAUSE -- IN MY OPINION, IT'S NOT
10 BECAUSE HE CAN'T. IT'S BECAUSE HE IS LOOKING FOR
11 SOMETHING. HE WANTS SOMETHING. AND YOU WILL FIND THAT
12 FROM PEOPLE THAT HAVE A BONDING ISSUE, AN ATTACHMENT
13 ISSUE AS THEY ARE GROWING UP. YOU WILL FIND THAT FROM
14 PEOPLE THAT DON'T FEEL LIKE THEY BELONG. THEY FEEL LIKE
15 THEY NEED TO HAVE SOMEBODY MAKE THEM OKAY. AND SO THEY
16 ARE SEARCHING FOR THAT, AND ANTISOCIAL DOES NOT DO THAT.

17 Q SO THE ANTISOCIAL DOES NOT HAVE -- THE ANTISOCIAL
18 DOESN'T CARE HOW ANYBODY ELSE FEELS ABOUT IT? IS THAT
19 WHAT YOU ARE SAYING?

20 A THAT IS MY OPINION, YES.

21 Q BUT THE BORDERLINE CARES VERY MUCH WHICH IS ONE OF
22 THE REASONS THEY ARE DOING IT?

23 A THEY STRUGGLE WITH THAT, YES.

24 Q IS THAT WHY YOU DID NOT DIAGNOSE HIM WITH ANTISOCIAL
25 PERSONALITY DISORDER?

1 A THAT IS WHY I DIAGNOSED HIM WITH BORDERLINE WITH
2 ANTISOCIAL FEATURES, YES, BECAUSE HE MEETS CRITERIA IN
3 BOTH OF THOSE AREAS. THERE ARE CRITERIA IN BOTH AREAS
4 THAT HE MEETS.

5 Q SO HE MEETS CRITERIA IN BOTH AREAS, BUT YOU CHOSE
6 BORDERLINE PERSONALITY DISORDER RATHER THAN ANTISOCIAL
7 PERSONALITY DISORDER, AND YOU CHOOSE BORDERLINE
8 PERSONALITY DISORDER OVER THE OTHER ONE BECAUSE?

9 A BECAUSE IN MY OPINION HE IS DOING THAT FOR A REASON.
10 THERE IS A REASON BEHIND HIS ACTIONS.

11 Q AND YOU FEEL THAT YOU GOT THOSE REASONS IN YOUR
12 INTERVIEW WITH HIM?

13 A I THINK THE REASONS ARE ALSO FOUND IN THE INTERVIEWS
14 THAT THE BOP DID OVER A PERIOD OF TIME ALONG WITH THE
15 PRESENTENCING EVAL. I THINK THEY COME OUT PRETTY CLEAR
16 BECAUSE THEY ALWAYS ARE TESTING TO HIS ACTIONS.

17 YES, I THINK I GOT THAT PLUS FROM THE STATIC AS WELL
18 AS THE INTERVIEW THAT I HAD WITH HIM.

19 Q WHAT DO YOU THINK ABOUT THE DIAGNOSIS OF DR. PHENIX
20 AND DR. GUTIERREZ THAT MR. ANTONE IS SUFFERING FROM
21 PARAPHILIA NOT OTHERWISE SPECIFIED, NONCONSENTING,
22 FEMALES?

23 A THE DSM REALLY DOESN'T HAVE THAT DIAGNOSIS AS STATED.
24 THERE ARE SOME PEOPLE THAT USE THAT. THEY DO HAVE A
25 DIAGNOSIS OF PARAPHILIA NOS.

1 Q PARAPHILIA NOS, DOES THE DSM REFER SPECIFICALLY TO
2 NOS WITH THE NONCONSENTING FEMALES INDICATOR?

3 A NO. THERE IS SPECIFIERS FOR THAT THAT I CAN FIND.

4 Q WHERE ARE SPECIFIERS USUALLY CHOSEN FROM? IS THERE A
5 LIST OF SPECIFIERS THAT FORENSIC PSYCHOLOGISTS USE?

6 A YES, MA'AM. DEPENDING ON THE DIAGNOSIS, WHETHER MOOD
7 DISORDER OR ANTISOCIAL DISORDER PERSONALITY, THERE ARE
8 CERTAINLY SPECIFIERS THAT GO WITH THAT.

9 Q AND WHERE WILL THOSE BE FOUND?

10 A WELL, THEY ARE NORMALLY FOUND IN THE DSM AS THEY ARE
11 DESCRIBING THE PARTICULAR DIAGNOSIS OR MOOD DISORDER.

12 Q BUT YOU SAID THEY ARE NORMALLY FOUND IN THE DSM, BUT
13 THE NONCONSENTING FEMALES IS NOT THERE?

14 A NOT UNDER THE NOS DIAGNOSIS, NO.

15 Q YOU MENTIONED THAT HEBEPHILIA WAS USED, AND THEN YOU
16 ALSO, THE NEXT SENTENCE, YOU SAID THAT IT WAS -- THAT
17 MANY PEOPLE DON'T USE IT. IS THAT A DEBATE WITHIN YOUR
18 FIELD OF FORENSIC PSYCHOLOGY?

19 A I BELIEVE SO, YES.

20 Q WHY DO YOU THINK IT IS UP FOR DEBATE?

21 A WELL, FOR ONE THING, IT'S NOT LISTED IN THE DSM.
22 SOME RESEARCHERS CALLED IT A MADE UP TERM, THAT IT SHOULD
23 NOT BE USED. OTHERS AGREE THAT IT SHOULD BE USED. SO IT
24 IS DEBATED.

25 Q IS THAT COMMON FOR PSYCHOLOGISTS TO USE TERMS THAT

1 ARE NOT IN THE DSM?

2 A NO, NOT NORMALLY. NO, NOT NORMALLY.

3 Q IN YOUR REVIEW OF THE RECORDS THAT WERE PROVIDED TO
4 YOU ABOUT MR. ANTONE, YOU WERE PROVIDED WITH THE 1999
5 EVALUATION OF DR. GRAY AND MR. SADLER, DO YOU REMEMBER
6 THAT?

7 A I DO.

8 Q WE HAVE REFERRED TO THAT REPORT IN VARIOUS TESTIMONY
9 FROM DIFFERENT WITNESSES. IN THAT REPORT, DID YOU FEEL
10 THAT THE REPORT WAS EXTENSIVE ENOUGH?

11 A YES.

12 Q TO BE ACCURATE?

13 A YES.

14 Q DID YOU RELY ON THAT REPORT WHEN YOU FORMULATED YOUR
15 OPINION?

16 A I USED THE INFORMATION FROM THAT REPORT, YES.

17 Q DO YOU RECALL WHETHER DR. GRAY OR MR. SADLER SPOKE TO
18 THE TARGET OF MR. ANTONE'S SEXUAL INTERESTS? AND WHO WAS
19 THE TARGET OF MR. ANTONE'S SEXUAL INTEREST?

20 A I RECALL THAT -- I THINK I RECALL A STATEMENT THAT
21 THERE WAS NO -- THAT CHILDREN WAS NOT A TARGET OF HIS
22 INTEREST, IF I AM REMEMBERING CORRECTLY.

23 DO YOU HAVE THAT REPORT HERE?

24 Q I DO. JUST A MOMENT. DO YOU RECALL AN AGE GROUP
25 BEING GIVEN?

1 A I AM SORRY?

2 Q DO YOU RECALL DR. GRAY GIVING AN AGE GROUP OF THE --
3 THAT MR. ANTONE IS SEXUALLY INTERESTED IN?

4 A THAT WAS OLDER TEENAGERS AND OLDER LADIES.

5 Q WAS THAT TEENAGE FEMALES, OR TEENAGE MALES AND
6 FEMALES?

7 A TEENAGE FEMALES.

8 Q WAS THERE ANY SEXUAL INTEREST NOTED FOR PREADOLESCENT
9 FEMALES?

10 A NOT THAT I RECALL.

11 Q WE ARE GOING TO GET THE EXHIBIT NUMBER SO THAT YOU
12 CAN REFER TO IT.

13 A I HAVE MY COPY, IF THAT HELPS.

14 Q IF YOU HAVE A COPY, IF YOU WOULD TAKE A MINUTE TO
15 REVIEW IT, I WOULD LIKE TO ASK YOU A FEW THINGS ABOUT
16 THAT?

17 A CERTAINLY.

18 MS. ALLEN: YOUR HONOR, WHAT DR. DAUM IS
19 REVIEWING IS MARKED DEPOSITION EXHIBIT NUMBER 5 WHICH IS
20 WHY IT IS NOT INCLUDED IN THE TRIAL EXHIBIT, BUT I CAN
21 ACTUALLY PLACE IT ON THE ELMO.

22 Q DR. DAUM, DO YOU RECOGNIZE WHAT IS ON THE MONITOR AS
23 WHAT IS DR. GRAY'S REPORT?

24 A I DO.

25 MR. ROYSTER: JUST FOR THE RECORD, IT'S

1 GOVERNMENT EXHIBIT 10.

2 MS. ALLEN: THANK YOU. IT'S GOVERNMENT
3 EXHIBIT 10.

4 Q HAVE YOU HAD A CHANCE TO FIND THAT INFORMATION ABOUT
5 HIS SEXUAL INTERESTS, DR. DAUM?

6 A YES. ON PAGE 1261.

7 Q WHAT DID DR. GRAY SAY WAS MR. ANTONE'S TARGET?

8 A HIS GREATEST SEXUAL INTERESTS TO BE IN FEMALES AGE 14
9 TO 17.

10 Q DO YOU SEE ANYTHING IN THAT REPORT THAT WOULD
11 INDICATE THAT ANY TESTS REVEALED THAT MR. ANTONE WAS
12 ATTRACTED TO PREADOLESCENT FEMALES?

13 A NO, I DO NOT.

14 Q OR PREADOLESCENT MALES?

15 A NO, I DO NOT.

16 Q DOES MR. ANTONE'S SEXUAL INTERESTS IN ADOLESCENT AND
17 ADULT FEMALES CAUSE YOU CLINICAL CONCERN WITH REGARD TO
18 WHETHER HE IS SEXUALLY DANGEROUS?

19 A IT BRINGS CLINICAL SIGNIFICANCE TO HIS PAST BEHAVIORS
20 OF RAPE, YES.

21 Q AND HOW DO YOU ADDRESS THAT WITHIN YOUR
22 CONSIDERATION?

23 A IT BEGINS TO TALK TO THE IDEA OF THE NEED FOR
24 TREATMENT AND THE NEED FOR THERAPY.

25 Q DO YOU BELIEVE MR. ANTONE NEEDS SEX OFFENDER

1 TREATMENT?

2 A YES, I DO.

3 Q DO YOU BELIEVE THAT HE NEEDS TO BE CIVILLY COMMITTED
4 IN ORDER TO RECEIVE THAT TREATMENT?

5 A IN ORDER TO RECEIVE THE TREATMENT, NO.

6 Q DO YOU BELIEVE THAT MR. ANTONE CAN DEVELOP A RELEASE
7 PREVENTION PLAN WHILE HE IS NO LONGER IN PRISON?

8 A A RELAPSE PREVENTION PLAN?

9 Q YES.

10 A YES I DO, WITH CERTAIN STIPULATIONS.

11 Q WELL, WHAT DO YOU THINK THAT MR. ANTONE NEEDS?

12 A AS FAR AS TREATMENT?

13 A I THINK MR. ANTONE NEEDS A STRUCTURED ENVIRONMENT IN
14 WHICH HE HAS COUNSELING AND THERAPY AVAILABLE IN ORDER
15 FOR HIM TO ASSIST TO FORMULATE A RECIDIVISM PLAN. AND AS
16 HE GOES THROUGH THE TREATMENT, THAT PLAN BECOMES ENHANCED
17 AND BECOMES TO WHERE HE CAN EVENTUALLY MOVE INTO THE
18 COMMUNITY STILL ATTENDING SEXUAL TREATMENT AND BECOME A
19 GAINFUL EMPLOYEE.

20 Q DO YOU THINK A STRUCTURED ENVIRONMENT CAN BE PROVIDED
21 FOR HIM IN A HALFWAY HOUSE?

22 A YES.

23 Q HAVE YOU SEEN THAT BE EFFECTIVE WITH OTHER SEX
24 OFFENDERS?

25 A YES.

1 Q IT'S EFFECTIVE WITH HALFWAY HOUSES OR EFFECTIVE WITH
2 PEOPLE BEING RELEASED FROM PRISON FOR HOW TO BE
3 REINTEGRATED INTO THE COMMUNITY, TO BE ON SUPERVISED
4 RELEASE FOR A PERIOD OF TIME SO EVENTUALLY THEY MOVE BACK
5 INTO THE COMMUNITY; YES.

6 Q HOW DO YOU ADDRESS THE PROPOSITION THAT THE REASON
7 MR. ANTONE HAS NOT VIOLATED RULES AND DRANK WHEN HE
8 WASN'T SUPPOSED TO AND BEEN A BEHAVIOR PROBLEM, HOW DO
9 YOU ADDRESS THE POSITION THAT THE REASON THAT HE -- THAT
10 THE PRISON, THE STRUCTURE OF PRISON KEEPS HIM FROM DOING
11 THAT? DO YOU BELIEVE THAT WITHOUT THE STRUCTURE OF
12 PRISON, HE IS LIKELY TO DO SOMETHING DIFFERENT?

13 A I THINK THAT IS A TWO PART QUESTION. AND THE FIRST
14 PART OF THAT IS I DON'T BELIEVE THAT PRISON, WHILE IT
15 LIMITS AVAILABILITY, I DO NOT BELIEVE IT STOPS
16 AVAILABILITY. THAT HAS NOT BEEN MY EXPERIENCE.

17 MY EXPERIENCE WITH THE PEOPLE THAT I HAVE WORKED
18 WITH ARE GOING TO HAVE THE KIND OF ACTING OUT OVER A
19 PERIOD OF TIME NO MATTER WHERE THEY ARE. IT CERTAINLY
20 MAKES IT HARDER TO ACT OUT WHEN YOU HAVE INCARCERATION,
21 BUT IT DOES NOT MAKE IT IMPOSSIBLE.

22 SECONDLY, I DON'T BELIEVE THAT MR. ANTONE NEEDS TO
23 BE IN A STRUCTURED ENVIRONMENT LOCK DOWN AS MUCH AS HE
24 NEEDS TO BE SUPERVISED IN A HALFWAY HOUSE SETTING TO
25 WHERE HE CAN MOVE AROUND WITHIN A CERTAIN AREA. I

1 BELIEVE THAT WOULD HELP, YES.

2 Q WE HAD TESTIMONY EARLIER ABOUT SEXUAL URGES, AND I
3 BELIEVE THAT DR. GUTIERREZ TESTIFIED AS TO SEXUAL URGES
4 TO WANT FORCED SEX.

5 WITHIN YOUR REVIEW OF THE DOCUMENTS THAT YOU WERE
6 PROVIDED, TESTIMONY THAT YOU HAVE HEARD, HAVE YOU SEEN
7 ANY EVIDENCE OR SEEN ANY ADMISSIONS BY MR. ANTONE OR
8 ANYTHING THAT WOULD INDICATE TO YOU THAT MR. ANTONE, IN
9 FACT, SUFFERS FROM OR HAS SEXUAL URGES TO WANT FORCED
10 SEX?

11 A I HAVE BEEN PROVIDED NO DOCUMENTATION WITH THAT AND
12 IN SPEAKING WITH HIM FOR AN INTERVIEW OVER THE FIVE
13 HOURS, I DID NOT WALK AWAY WITH THAT IMPRESSION, NO.

14 Q DID DR. GRAY, IN HIS REPORT IN 1999, SPEAK TO THAT?

15 A HE DOES IN A NUMBER OF WAYS, AND HE IS SAYING ALSO
16 THAT THAT IS NOT THERE.

17 Q AND WHAT WAYS DID DR. GRAY SPEAK TO THAT?

18 A LET'S ME GET HIS REPORT AGAIN.

19 Q GOVERNMENT'S EXHIBIT NUMBER 10.

20 A I HAVE WHAT I HAVE IS DEPOSITION EXHIBIT 5.

21 Q THAT IS FINE. IT'S THE SAME THING. AND I MIGHT BE
22 ABLE TO HELP YOU. IF YOU TURN TO PAGE 5, THERE ARE
23 SEVERAL BEHAVIORS THAT DR. GRAY TALKED ABOUT. I DON'T
24 KNOW IF THOSE ARE THE ONES YOU ARE REFERRING TO, BUT THAT
25 MIGHT GIVE YOU SOME GUIDANCE ON WHERE YOU MAY WANT TO

1 LOOK.

2 A YOU ARE LOOKING AT PAGE -- WHAT PAGE?

3 Q DR. GRAY'S PAGE 5, BOP ANTONE, PAGE 1254. AND I AM
4 JUST ASSUMING THAT YOU MIGHT BE ON THAT PAGE. I HAVE NO
5 IDEA WHAT YOU WERE GOING TO SAY. I JUST WANTED TO GIVE
6 YOU SOME GUIDANCE.

7 A WHAT YOU ARE LOOKING AT ON PAGE 5 ARE ALSO THE KINDS
8 OF QUESTIONS I ASKED HIM DURING THE INTERVIEW. IT HAS TO
9 DO WITH DEVIANT SEXUAL BEHAVIORS, AND WHAT THE REPORT IS
10 SHOWING IS THAT HE IS NOT SHOWING DEVIANT SEXUAL
11 BEHAVIORS OUTSIDE OF HIS -- OUTSIDE OF HIS CRIMINAL ACTS.

12 I ASKED HIM AS WELL AS DID THIS PARTICULAR PERSON IF
13 HE GOES TO PROSTITUTES AND HE SAID THAT HE HAD ONE
14 PROSTITUTE BUT HE DIDN'T PAY THE PRICE.

15 HE DOESN'T ENGAGE IN BONDAGE. HE DOESN'T ENGAGE IN
16 BESTIALITY. HE DOESN'T ENGAGE IN THE KINDS OF THINGS YOU
17 WOULD THINK A PERSON OF DEVIANT SEXUAL AROUSAL WOULD
18 ENGAGE IN.

19 THE COURT: LET ME JUST NOTE FOR THE RECORD
20 THAT IN THE EXHIBIT BOOK, THE BATES PAGE IS 1850 WHICH
21 I THINK IS DIFFERENT FROM THE NUMBER THAT COUNSEL GAVE.
22 IF YOU COULD REMOVE THE DOCUMENT FROM THE PROJECTOR
23 SCREEN, PLEASE.

24 MS. ALLEN: THANK YOU, YOUR HONOR.

25 Q WELL, DR. DAUM, I UNDERSTAND THAT ONE OF THE

1 ARGUMENTS THAT HAS BEEN ADVANCED IS THAT MR. ANTONE DOES
2 NOT ACT OUT SEXUALLY BECAUSE TO SOME DEGREE THE
3 OPPORTUNITY IS NOT AVAILABLE TO HIM. BUT THAT DOES NOT
4 NECESSARILY PROVE THAT HE IS NOT SEXUALLY DANGEROUS.

5 HAVE YOU HAD, IN YOUR EXPERIENCE, PERHAPS AT THE
6 HOSPITAL OR IN SOME OF YOUR OTHER EXPERIENCE AS A
7 FORENSIC PSYCHOLOGIST, HAVE YOU HAD AN OPPORTUNITY TO
8 OBSERVE PEOPLE WHO DO ACT OUT BASED UPON STRONG SEXUAL
9 URGES?

10 A YES. VERY MUCH SO.

11 Q ARE THOSE PEOPLE IN A CONFINED ENVIRONMENT?

12 A YES. THAT IS ONE OF THE THINGS THAT I'VE LEARNED HAS AS
13 FAR AS TRAINING IS CONCERNED. IT MAKES IT A VALUABLE
14 INSTITUTION. I HAVE OBSERVED PEOPLE THAT HAVE SUCH A
15 PEDOPHILIC INTENT THAT THEY WOULD LICK THE TELEVISION. I
16 HAVE SEEN THEM TRY AND SEDUCE NURSES TO HAVE ORAL SEX. I
17 HAVE SEEN THEM DO DEVIANT HOMOSEXUAL KINDS OF ACTIVITIES.
18 I HAVE NOT FOUND IN MY EXPERIENCE THAT A PERSON WHO HAS A
19 PEDOPHILIC DIAGNOSIS TO BE ABSOLUTELY HINDERED IN LOCK
20 UP. I THINK IT'S JUST THE OPPOSITE.

21 Q WHEN YOU SAY JUST THE OPPOSITE, WHAT DO YOU MEAN?

22 A I THINK IT CONTINUES.

23 Q YOU REFERRED TO SOMEONE -- YOU HAVE SEEN SOMEONE LICK
24 THE TV. CAN YOU EXPLAIN THAT?

25 A YES. YOU WOULD EXPECT A PERSON THAT IS A PEDOPHILE,

1 FOR INSTANCE, TO WANT TO ORDER -- HAVE CATALOGS SENT IN,
2 J.C. PENNY CATALOGS, OR WATCH WALT DISNEY MOVIES OR
3 ANYTHING THAT HAS CHILDREN IN IT, AND ESPECIALLY WITH
4 TELEVISION, YOU WOULD SEE A PERSON -- THIS INDIVIDUAL
5 THAT WE HAVE CURRENTLY IN TREATMENT WILL WALK UP, AND
6 WHEN THERE IS A CHILDREN'S PROGRAM ON, HE GETS AN
7 ERECTION AND HE WALKS UP TO THE TV AND KISSES IT IN FRONT
8 OF THE GUARD, IN FRONT OF SECURITY, IN FRONT OF THE
9 TREATMENT. IT DOESN'T MAKE ANY DIFFERENCE AT ALL. THAT
10 IS WHAT HE DOES. AND HE HAS A COMPULSION TOWARDS DOING
11 THAT.

12 IT DOESN'T -- THE TREATMENT DOESN'T STOP HIM FROM
13 DOING THAT.

14 Q HAVE YOU HAD ANY -- HAS THERE BEEN ANY INFORMATION
15 PROVIDED TO YOU THAT MR. ANTONE HAS ACTED IN ANY SEXUALLY
16 DEVIANT WAYS SUCH AS PROPOSITIONING GUARDS FOR SEX?

17 A NO. I ASKED ABOUT THAT. NO. HE DENIED THAT AND I
18 HAVE NO DOCUMENTATION PROVIDED THAT SHOWED ANY KIND OF
19 DEVIANT BEHAVIOR ON HIS PART SINCE HE HAS BEEN
20 INCARCERATED.

21 Q DID YOU SEE ANY INCIDENT REPORTS REGARDING
22 PROPOSITIONING SOMEONE FOR SEX?

23 A NO.

24 Q OR ANY INCIDENT REPORTS RELATED TO ANY SEXUAL CONTACT
25 WITH ANYONE?

1 A NO.

2 Q OR ANY INCIDENT REPORTS WITH REGARD TO HIS -- THAT HE
3 HAD AN INTEREST IN PREPUBESCENT FEMALES?

4 A NO.

5 Q DID YOU SEE ANYTHING IN THE -- IN ANY OF THE REPORTS,
6 IN ANY OF THE DOCUMENTATION THAT YOU WERE PROVIDED OR
7 TESTIMONY THAT WOULD LEAD YOU TO BELIEVE THAT HE HAS AN
8 URGE TO RAPE?

9 A NO. AND I LOOKED FOR THAT. BUT I COULD NOT FIND
10 THAT. I WAS LOOKING TO SEE IF WHAT -- IF THERE WAS A
11 PLANNED -- IF THERE WAS A PLANNED, A STALKING, A
12 GROOMING, AN INTENTIONAL, OVER A PERIOD OF TIME, OF
13 TRYING TO SET UP A VICTIM, AND I DID NOT FIND THAT.

14 I FOUND -- WHAT I FOUND WAS A LOT OF IMPULSIVITY.

15 Q CAN YOU GIVE AN EXAMPLE OF WHAT YOU MEAN BY A PLANNED
16 SET UP?

17 A A PLANNED SET UP MAY BE STALKING A PERSON OR GROOMING
18 AN INDIVIDUAL, TO GETTING TO KNOW THEM, DOING THINGS OVER
19 A PERIOD OF TIME. IT TAKES A PERIOD OF TIME TO DO THAT.
20 IN MR. ANTONE'S CASE WHAT I FOUND WAS JUST AN IMMEDIATE
21 GRATIFICATION. IT'S ALMOST LIKE A DISINHIBITED
22 EXPLOITATION. IT'S OPPORTUNISTIC.

23 Q WHEN YOU SAY THAT IT WAS OPPORTUNISTIC, WOULD THAT
24 LEAD -- WOULD THAT BE MORE SIMILAR TO SAY THE GARDEN
25 VARIETY CRIMINAL ACTIVITY VERSUS A SEX OFFENDER WHO HAS A

1 COMPULSION TO RAPE?

2 A THE PEOPLE THAT I HAVE DEALT WITH THAT ARE SEX
3 OFFENDERS HAVE A HISTORY OF SETTING VICTIMS UP. THEY
4 HAVE A HISTORY OF KNOWING WHAT THEY HAVE DONE. THEY HAVE
5 A PATTERN THAT THEY CAN IDENTIFY WITH. THEY HAVE ALMOST
6 LIKE A MODUS OPERANDI.

7 WHAT I FOUND WITH MR. ANTONE IS MR. ANTONE HAS A
8 PERIOD OF SUBSTANCE ABUSE, OF BEING COMPLETELY BLACKED
9 OUT, OF HAVING ALCOHOLIC AMNESIA. THAT IS NOT -- THAT IS
10 NOT A PATTERN THAT I WOULD THINK FOR A (QUOTE) "SEX
11 OFFENDER", THAT IS OFFENDING BECAUSE HE IS PLANNING THAT
12 PARTICULAR PROGRAM, THAT PARTICULAR CRIME.

13 Q SO WHEN YOU TALK ABOUT MR. ANTONE'S BLACKOUTS -- AND
14 WE HAVE HEARD A LITTLE BIT ABOUT THAT -- YOU WROTE IN
15 YOUR REPORT THAT HE TOLD YOU HE DID NOT REMEMBER, BUT HE
16 HAD NO REASON TO BELIEVE HIS VICTIMS WERE LYING ABOUT
17 WHAT THEY HAD ACCUSED HIM OF?

18 A YES, I HEARD HIM SAY THAT.

19 Q AND HE ACTUALLY SAID THAT TO YOU IN YOUR INTERVIEW AS
20 WELL?

21 A YES.

22 Q DID YOU HAVE ANY REASON TO BELIEVE THAT HE JUST
23 DIDN'T WANT TO TALK ABOUT IT?

24 A NO. JUST THE OPPOSITE. HE WAS VERY OPEN IN TALKING.
25 WHAT I UNDERSTOOD FROM MR. ANTONE AS HE SPOKE WAS IF I

1 WAS DRUNK, I WAS OUT. I DON'T KNOW THIS. IF THEY SAID
2 IT HAPPENED, THEN IT PROBABLY HAPPENED. THAT IS WHAT I
3 UNDERSTOOD HIM TO SAY.

4 Q WELL, WHEN YOU REFER TO A BLACKOUT, THEN YOU ARE NOT
5 SAYING THAT HE WAS PASSED OUT UNCONSCIOUS SOMEWHERE. YOU
6 MEAN A BLACKOUT WITH RELATION TO HIS MEMORY OR A PHYSICAL
7 SHUTTING DOWN OF HIS BODY?

8 A NO. THERE IS NO PHYSICAL SHUTTING DOWN. THERE IS
9 A -- I GET MY PAYCHECK ON FRIDAY AT 3:00 O'CLOCK AND IT'S
10 MONDAY MORNING AND I HAVE NO IDEA WHAT HAPPENED AND I AM
11 AT WORK.

12 Q SO MORE LIKE AN AMNESIA, WOULD THAT BE A BETTER WAY
13 TO DESCRIBE IT?

14 A THAT IS THE TERMINOLOGY, ALCOHOLIC AMNESIA, YES.

15 Q IS THAT SOMETHING YOU HAVE SEEN IN OTHER CLIENTS THAT
16 YOU HAVE DEALT WITH?

17 A YES.

18 Q AND OTHER PATIENTS THAT HAVE ALCOHOL DEPENDENCE?

19 A I HAVE BEEN ON A RESERVATION WHERE I HAVE DONE THREE
20 OF THOSE, WORKED WITH THREE OF THOSE.

21 Q AND BLACKOUTS WERE A COMMON OCCURRENCE?

22 A YES.

23 Q DOES THAT INDICATE -- STRIKE THAT.

24 NOW, WOULD YOU SAY THAT BECAUSE OF WHERE YOU WORK,
25 IT'S PROBABLY EASIER FOR YOU THAN MOST TO RECOGNIZE WHEN

1 SOMEBODY NEEDS TO BE CIVILLY COMMITTED?

2 A EVERYONE IN KANSAS COMES THROUGH OUR INSTITUTION FOR
3 CIVIL COMMITMENT. I SEE EACH ONE OF THOSE INDIVIDUALS.
4 I WORK WITH INDIVIDUALS. I DON'T DO THE REPORT, BUT I AM
5 PRIVY TO THE INTERACTION THAT GOES ON WITH EACH
6 INDIVIDUAL. SO YES, IT'S A GREAT TRAINING INSTITUTION
7 FOR THIS PARTICULAR KIND OF WORK, YES.

8 Q SO YOU HAVE THE ABILITY TO SEE EXTREME CASES AND TO
9 KNOW WHEN SOMETHING MAY NOT BE EXTREME?

10 A THAT IS TRUE.

11 Q HOW DIFFERENT IS MR. ANTONE FROM SOMEONE THAT YOU
12 WOULD SEE WHO HAS BEEN CIVILLY COMMITTED? OR IN WHAT
13 WAYS IS MR. ANTONE THE SAME OR DIFFERENT?

14 A I BELIEVE THERE ARE MANY FACTORS THAT YOU LOOK AT AS
15 FAR AS A CIVIL COMMITMENT IS CONCERNED. CERTAINLY YOU
16 HAVE HEARD THE LAST TWO DAYS OF A LOT OF DISCUSSION ABOUT
17 ACTUARIALS. ONE OF THE THINGS THAT IS REALLY MISSING IS
18 THE DYNAMIC FACTORS OF HOW THAT PERSON IS NOW IN
19 RELATIONSHIP TO THE ACTS. STATIC, MEANING IT'S ALL SAID
20 AND DONE AND IT'S EASY TO SCORE, IN A WAY, HOW YOU
21 INTERPRET THAT, BUT THE DYNAMIC FACTORS ALLOW FOR THE
22 GROWTH OF A PERSON TO CHANGE OR IT ALLOWS FOR THE PERSON
23 NOT TO CHANGE.

24 AND SO WHEN YOU LOOK AT MR. ANTONE, YOU ARE LOOKING
25 AT IS THERE A PATTERN OF ANTISOCIAL BEHAVIORS OVER A

1 PERIOD OF TIME SINCE INCARCERATION, AND YOU DIDN'T SEE
2 THAT. IS HE WELL MANAGED IN INCARCERATION? YOU SAY HE
3 IS.

4 YOU ARE LOOKING AT VARIOUS THINGS THAT ANTISOCIAL OR
5 BORDERLINE PEOPLE DO, AND YOU ARE NOT SEEING THOSE
6 BEHAVIORS. IF YOU SEE THOSE BEHAVIORS, THAT IS
7 INDICATING THAT PERSON IS CONTINUING ON THE KINDS OF
8 BEHAVIORS THAT GOT HIM IN TROUBLE IN THE PAST. YOU DON'T
9 SEE THAT WITH MR. ANTONE. SO IN THAT WAY, IT'S
10 DIFFERENT.

11 Q WHAT WOULD YOU SAY ARE DYNAMIC RISK FACTORS THAT
12 SHOULD BE CONSIDERED?

13 A I THINK THERE ARE -- WELL, I DON'T THINK MY COMMUNITY
14 AGREES ON ALL OF THEM SINCE THERE IS A NUMBER, BUT THEY
15 DO AGREE ON SOME. THEY ARE LOOKING AT A PERSONALITY
16 DISORDER. THEY ARE LOOKING AT A PARAPHILIA. THEY ARE
17 NOT LOOKING AT BEING SEXUALLY ABUSED. THEY ARE NOT
18 LOOKING AT LACK OF EMPATHY FOR A VICTIM. THEY ARE NOT
19 LOOKING FOR LONELINESS.

20 WHAT THEY ARE LOOKING FOR IS SUBSTANCE ABUSE. THEY
21 ARE LOOKING FOR HOW THAT PARTICULAR PERSON IS
22 INTERACTING, SOCIAL SKILLS. THAT IS THE KIND OF
23 PERSONALITY AND DYNAMIC FACTORS THAT WE ARE LOOKING AT.

24 Q WOULD SEXUAL PREOCCUPATION BE A DYNAMIC RISK FACTOR?

25 A VERY MUCH SO.

1 Q DO YOU HAVE ANY EVIDENCE THAT MR. ANTONE HAS BEEN
2 SEXUALLY PREOCCUPIED OVER THE LAST DECADE THAT HE HAS
3 BEEN IN PRISON?

4 A NO. I WAS LOOKING FOR THAT. I WAS LOOKING TO SEE --
5 I THINK THEY CALL THEM SHOTS.

6 Q UM-HUM.

7 A OR BEING IN SPECIAL HOUSING UNITS FOR ANY KIND OF
8 SEXUAL ACTING OUT. I FOUND NONE. I WAS LOOKING FOR
9 EVIDENCE OF PORNOGRAPHY OVER A PERIOD OF TIME, EXCHANGING
10 FILMS, CARDS, THAT KIND OF THING. I FOUND NONE OF THAT.
11 I FOUND NO BEHAVIORS OF TRYING TO ENTICE STAFF OR
12 INTERACTING WITH STAFF IN AN INAPPROPRIATE MANNER. I
13 FOUND NONE OF THAT.

14 Q DID YOU FIND ANY GENERAL SELF REGULATION PROBLEMS?

15 A NO. JUST THE OPPOSITE. MOST OF THE REPORTS THAT I
16 WAS PRIVY TO SEE FROM THE BOP SHOWED THAT HE WAS A GOOD
17 WORKER, THAT HE HAD SATISFACTORY REPORTS OVER A PERIOD OF
18 TIME SINCE HIS INCARCERATION.

19 Q SO WHAT ABOUT EMPLOYMENT INSTABILITY. IS THAT A
20 DYNAMIC RISK FACTOR?

21 A IT IS, BUT -- IT IS, AND THERE IS AN ISSUE WITH THAT.
22 AND THAT IS A CULTURAL ISSUE. ON MANY RESERVATIONS, IT'S
23 NOT POSSIBLE TO HAVE STEADY EMPLOYMENT. WHAT YOU HAVE IS
24 YOU HAVE SEASONAL EMPLOYMENT. AN EXAMPLE, AND FOR THE
25 MESCALERO APACHE, THERE ARE NO -- THERE IS NO WAY TO

1 HAVE, IF YOU LIVE ON A RESERVATION, THEY SHUT THE SAWMILL
2 DOWN, SO THERE IS NO YEAR ROUND WORK. WHAT THEY DO IS IN
3 THE WINTERTIME THEY HAVE A SKI LODGE AND THE PEOPLE ARE
4 EMPLOYED IN THE SKI LODGE. IN THE SUMMERTIME, THEY CUT
5 WOOD. SO THAT IS THEIR SEASON.

6 BUT IF YOU SAY, HAVE YOU HAD STEADY EMPLOYMENT, HE
7 WILL SAY NO. AND THEN THE FLAG GOES UP. BUT THAT IS NOT
8 REALLY VALID IF YOU ARE ON THE RESERVATION BECAUSE THE
9 ONLY THING POSSIBLE IS TO HAVE SEASONAL WORK.

10 SO YOU ARE LOOKING AT HAVE YOU HAD SEASONABLE WORK
11 CONSISTENTLY. YES. OKAY. THEN THERE IS NO FLAG THAT
12 GOES UP.

13 Q SO THAT WOULD BE SOMETHING THAT IS UNIQUE TO NATIVE
14 AMERICANS?

15 A YES.

16 Q IS IT YOUR OPINION THAT IN THE ABSENCE OF A
17 PARAPHILIA, THAT SOMEONE CAN BE COMMITTED AS A SEXUALLY
18 VIOLENT PREDATOR OR A SEXUALLY DANGEROUS PERSON?

19 A THE LITERATURE SPEAKS TO THE NEED FOR A PARAPHILIA
20 DIAGNOSIS. ONE OF THE THINGS THAT IS INTERESTING IN MY
21 FIELD IS THE IDEA OF CIVIL COMMITMENT IS CHANGING AS WE
22 GO THROUGH.

23 AT FIRST WHEN THE ACTUARIALS CAME OUT, THE
24 RECIDIVISM RATES WERE HERE, AND WE KNOW THAT OVER A
25 PERIOD OF TIME, NO MATTER WHAT CATEGORY YOU ARE,

1 RECIDIVISM RATES ARE GOING DOWN. SO OUR INFORMATION WHEN
2 WE FIRST STARTED WAS NOT CORRECT. WHEN WE FIRST STARTED,
3 WE BEGAN TO THINK SOME OF THE DYNAMIC FACTORS WE WERE
4 LOOKING AT WAS VERY IMPORTANT. WE HAVE SINCE LEARNED
5 THAT THOSE FACTORS ARE NO LONGER IMPORTANT. THERE ARE
6 OTHER RISK FACTORS TO LOOK AT. SO WE CHANGE AS WE ARE
7 GOING THROUGH WITH CIVIL COMMITMENT.

8 Q OF THE PEOPLE THAT YOU COME INTO CONTACT WITH DAILY
9 THAT ARE CIVILLY COMMITTED WHERE YOU WORK, DO YOU HAVE A
10 RECOLLECTION OF WHAT PERCENTAGE OF THOSE PEOPLE ARE
11 ACTUALLY SUFFERING FROM A PARAPHILIA OF THE PEOPLE THAT
12 ARE CIVILLY COMMITTED?

13 A I REALLY DON'T. I WOULD ASSUME, JUST BASED UPON
14 KANSAS LAW, THAT ALMOST ALL OF THEM WILL HAVE A
15 PARAPHILIA.

16 MS. ALLEN: IF I CAN HAVE JUST A MOMENT YOUR
17 HONOR.

18 THE COURT: YOU MAY.

19 MS. ALLEN:

20 Q WHO ARE SOME OF THE RESEARCHERS IN YOUR FIELD THAT
21 YOU RELY ON FOR MAKING SURE YOU ARE USING DYNAMIC -- THE
22 RIGHT DYNAMIC RISK FACTORS AND STAYING UP ON THE CHANGES
23 THAT ARE GOING ON IN YOUR FIELD?

24 A WE RELY A LOT ON THE WORK OF HANSON. WE RELY ON THE
25 WORK OF DR. PHENIX. WE RELY ON THE WORK OF ANN PSALTER.

1 LIKE THAT.

2 Q I WOULD LIKE TO ASK YOU TO LOOK AGAIN AT GOVERNMENT'S
3 EXHIBIT NUMBER 10 AND IT'S DR. GRAY'S REPORT. IT'S PAGE
4 20 OF THE REPORT. IT'S PAGE 20 OF DR. GRAY'S REPORT.
5 IT'S ACTUALLY BATES PAGE NUMBER 1865. THERE IS PARAGRAPH
6 5 ON THAT PAGE, AND THERE IS ITEM NUMBER 1. HAVE YOU
7 FOUND WHERE I AM?

8 A YES. LINE PAGE 20?

9 Q YES.

10 A OKAY.

11 Q THIS IS A -- WHY DON'T YOU TELL ME WHAT THIS IS AND
12 WHAT YOU GATHERED FROM THIS REPORT?

13 A IT'S TITLED EVALUATION OF ISSUES, SITUATIONS OR
14 CONDITIONS WHICH MAY EITHER ENHANCE OR INTERFERE WITH OR
15 PROMOTE A SUCCESSFUL COMPLETION OF TREATMENT.

16 Q WHAT DOES THAT MEAN?

17 A IT APPEARS LIKE WHAT THE DOCTOR IS LISTING IS HE HAS
18 A SERIES OF FACTORS HE IS LOOKING AT TO SEE IF THEY ARE
19 EITHER PRESENT OR ABSENT AND WHAT THEY WILL DO IS THEY
20 WILL EITHER INHIBIT TREATMENT OR PROMOTE TREATMENT.

21 Q LET'S LOOK AT NUMBER 1, "PHALLOMETRIC ASSESSMENT OF
22 SEXUAL PREFERENCE FOR CHILDREN, VISUAL REACTION TIME
23 USED: ABSENT."

24 DR. DAUM, CAN YOU TELL ME WHAT THE PHALLOMETRIC
25 ASSESSMENT OF SEXUAL PREFERENCE IS AND WHAT THAT MEANS?

1 A AS I UNDERSTAND IT, THEY ARE TAKING, AS DESCRIBED,
2 I THINK THE PROBATION OFFICER DESCRIBED IT EARLIER, THEY
3 TAKE AN INSTRUMENT AND ATTACH IT TO THE PENIS AND THEN
4 THEY WILL SHOW -- THEY WILL PUT EARPHONES ON YOUR HEAD
5 AND LET YOU LISTEN TO SOMETHING AND ALSO WATCH A TV
6 CAMERA OF SOME SORT WHERE THEY SHOW THINGS THAT GO ON AND
7 ON AND ON AND THEN YOU ARE TO PRESS A BUTTON OR YOU ARE
8 TO SIT AND WATCH, AND IF THE PENIS INCREASES IN SIZE OR
9 VOLUME, IT'S INDICATING THAT YOU ARE AROUSED TO THAT.

10 Q AND WHAT WAS THE CONCLUSION OF THAT IN DR. GRAY'S
11 REPORT?

12 A THERE DOES NOT SEEM TO BE ANYTHING ABNORMAL, THAT HE
13 SHOWS NO SEXUAL PREFERENCE FOR CHILDREN.

14 Q DR. DAUM, YOU JUST TESTIFIED THAT YOU LOOKED AT THE
15 RESEARCH, YOU LOOKED AT THE RESEARCH FROM DR. HANSON, AND
16 YOU ALSO SAID YOU LOOK AT RESEARCH BY DR. PHENIX?

17 A YES.

18 Q YET YOU DID NOT REACH THE SAME CONCLUSION THAT DR.
19 PHENIX REACHED IN THIS CASE, SO WHY IS SHE WRONG AND WHY
20 ARE YOU RIGHT?

21 A I DON'T THINK IT'S ABOUT RIGHT OR WRONG. I THINK
22 IT'S ABOUT HOW YOU INTERPRET THE FACTS. OR AT LEAST THAT
23 IS MY OPINION. OTHERS MAY DISAGREE, BUT I THINK MY JOB
24 IS SIMPLY TO PRESENT HOW I SEE SOMETHING, AND THEN LET
25 THE COURT DECIDE ON THAT. SO IT'S NOT ABOUT RIGHT OR

1 WRONG. IT'S ABOUT I INTERPRET DATA THIS WAY. SHE
2 INTERPRETS DATA THAT WAY, ALL WITHIN CONFINES OF DSM-IV
3 AND HOW WE ARE TRAINED.

4 SO IT'S VERY POSSIBLE FOR ONE PSYCHOLOGIST TO SAY I
5 SEE IT THIS WAY AND ANOTHER TO SAY I SEE IT THAT WAY.

6 Q WHAT ARE YOUR THOUGHTS ABOUT ANTISOCIAL PERSONALITY
7 DISORDER? DO YOU BELIEVE THAT ALONE IS SUFFICIENT TO --
8 I REALIZE THAT YOU DID NOT REACH THAT DIAGNOSIS WITH MR.
9 ANTONE, BUT IN THE EVENT THAT THE COURT WERE TO CONCLUDE
10 THAT PERHAPS HE DOES HAVE ANTISOCIAL PERSONALITY
11 DISORDER, DO YOU BELIEVE THAT A DIAGNOSIS OF ANTISOCIAL
12 PERSONALITY DISORDER IS SUFFICIENT, STANDING ALONE, TO
13 JUSTIFY A SEXUALLY DANGEROUS PERSON'S CIVIL COMMITMENT?

14 A NO, NOT AS YOU ARE STATING IT; NO, I DON'T BELIEVE
15 THAT. IT'S ABOUT THE DEGREE OF MORE SO THAN ANYTHING
16 ELSE. IT'S -- THE COURTS, AS I UNDERSTAND IT, THE COURTS
17 ARE LOOKING TO SEE IF THERE IS A PARAPHILIA, BUT THEY ARE
18 ALSO LOOKING TO SEE -- THERE HAS TO BE SOME KIND OF
19 MENTAL ABNORMALITY, SOMETHING THAT STARTS AT AN
20 INDIVIDUAL WHERE THEY ARE COMPULSIVE, WHERE THEY CANNOT
21 OR THEY HAVE DIFFICULTY CONTROLLING THEIR EMOTIONS, THEIR
22 REACTIONS TO WHERE THEY ARE GOING TO REOFFEND, AND
23 PERSONALITY CERTAINLY FIGURES INTO THAT AS WELL AS MOOD
24 DISORDERS.

25 Q IS MR. ANTONE PRESENTLY SUFFERING FROM A MENTAL

1 ILLNESS, SERIOUS MENTAL ILLNESS, ABNORMALITY OR DISORDER
2 IN YOUR OPINION? STRIKE THAT. WE'LL START OVER.

3 IS MR. ANTONE SUFFERING, PRESENTLY, TODAY, SUFFERING
4 FROM A SERIOUS MENTAL ILLNESS, ABNORMALITY, OR DISORDER
5 AS A RESULT OF WHICH HE WOULD HAVE SERIOUS DIFFICULTY IN
6 REFRAINING FROM SEXUALLY VIOLENT CONDUCT OR CHILD
7 MOLESTATION IF RELEASED?

8 DO YOU BELIEVE THAT HE IS A PERSON THAT SUFFERS FROM
9 A MENTAL ILLNESS, ABNORMALITY OR DISORDER AS A RESULT OF
10 WHICH HE WOULD HAVE SERIOUS DIFFICULTY IN REFRAINING FROM
11 SEXUALLY VIOLENT CONDUCT OR CHILD MOLESTATION IF HE WERE
12 RELEASED?

13 A PRESENTLY?

14 Q YES.

15 A NO.

16 Q SO YOUR TESTIMONY IS THAT ALTHOUGH HE HAS A DIAGNOSIS
17 OF -- LET ME ASK YOU THIS. WHAT IS THE QUESTION YOU
18 BELIEVE YOU HAVE BEEN ASKED HERE TODAY TO ANSWER FOR THE
19 COURT?

20 A THE QUESTION THAT I THINK THAT I HAVE ANSWERED FOR
21 THE COURT OR RECOMMENDED TO THE COURT IS WILL MR.
22 ANTONE -- DOES HE HAVE A MENTAL DISORDER THAT WILL MAKE
23 IT SUCH THAT HE CANNOT GO OUT INTO THE COMMUNITY. THAT
24 IS WHAT I THINK MY QUESTION THAT I AM SUPPOSED TO ANSWER
25 OR TO RECOMMEND.

1 HE HAS A MENTAL DISORDER. HE HAS A PERSONALITY
2 DISORDER, BUT HE DOES NOT AT THIS POINT HAVE IT SUCH THAT
3 HE CANNOT CONTROL HIS SEXUAL URGES.

4 Q SO YOU BELIEVE THAT WITH REGARD TO THE LANGUAGE OF
5 THE STATUTE, YOUR TESTIMONY IS THAT YOU DO NOT -- YOU
6 BELIEVE HE DOES HAVE A DISORDER, HOWEVER, YOU DO NOT
7 BELIEVE THAT HE WOULD HAVE SERIOUS DIFFICULTY IN
8 REFRAINING FROM SEXUALLY VIOLENT CONDUCT?

9 A THAT'S CORRECT.

10 Q OR CHILD MOLESTATION IF HE WERE RELEASED?

11 A THAT'S CORRECT.

12 MS. ALLEN: THANK YOU.

13 THE COURT: THANK YOU. HAVE YOU COMPLETED
14 YOUR EXAMINATION OF DR. DAUM?

15 MS. ALLEN: I HAVE. THANK YOU.

16 THE COURT: VERY GOOD. MR. ROYSTER.

17 MR. ROYSTER: THANK YOU, JUDGE.

18 CROSS EXAMINATION BY MR. ROYSTER:

19 Q DR. DAUM, CERTAINLY YOU WOULD AGREE THAT MR. ANTONE'S
20 CONDUCT BEFORE HIS INCARCERATION IS RELEVANT TO YOUR
21 EVALUATION; RIGHT?

22 A VERY MUCH, SIR.

23 Q BECAUSE YOU BELIEVE THAT PAST BEHAVIOR IS A GOOD
24 PREDICTOR OF FUTURE BEHAVIOR; DON'T YOU?

25 A I BELIEVE THAT PEOPLE BELIEVE THAT, YES.

1 Q YOU BELIEVE THAT; DON'T YOU?

2 A NO, I DON'T.

3 Q YOU DID NOT TELL ME AT YOUR DEPOSITION THAT PAST
4 BEHAVIOR IS A GOOD PREDICTOR OF FUTURE BEHAVIOR; IS THAT
5 YOUR TESTIMONY?

6 A YES, I DID, AND I WANT TO CLARIFY THAT IF I CAN.

7 Q PLEASE.

8 A BECAUSE WHEN -- AND I HEARD THAT SAID TODAY. WHAT IS
9 NOT SAID IS THE ABILITY FOR A HUMAN TO CHANGE. I HAVE
10 SEEN OVER THE YEARS WITH PEOPLE I WORK WITH, PEOPLE THAT
11 I HAVE TREATED, THAT THEY WILL HAVE THIS DISORDER AND
12 HAVE DONE THIS OVER A PERIOD OF TIME. BUT THE IDEA OF
13 TREATMENT AND THERAPY IS THAT IT CAN CHANGE. IF NOT, WE
14 WOULD HAVE NO JOBS.

15 SO OVER A PERIOD OF TIME, I WOULD SAY THAT A PERSON
16 THAT HAS A SEXUAL DEVIANT BEHAVIOR HAS THE CHANCE AND THE
17 POSSIBILITY OF NO LONGER HAVING THAT ANYMORE. WHERE THE
18 FIRST PART OF THAT STATEMENT COMES IN IS IT GIVES YOU A
19 CAUTION AND YOU BEGIN TO ASK SO WHAT CHANGES, WHAT KINDS
20 OF THERAPY HAVE YOU HAD. THEREFORE, YOU CAN PROVE
21 CHANGE. THAT IS WHAT I MEANT TO SAY, SIR.

22 Q SO THE THERAPY AND THE SEX OFFENDER TREATMENT IS WHAT
23 WOULD HELP THE PERSON CHANGE; RIGHT?

24 A YES, SIR.

25 Q NOW, YOU HAVE NEVER AUTHORED OR CO-AUTHORED A PEER

1 REVIEW ARTICLE REGARDING SEX OFFENDER TREATMENT; HAVE
2 YOU?

3 A NO, SIR, I HAVE NOT BEEN PRIVILEGED TO DO THAT.

4 Q YOU HAVE NEVER AUTHORED OR CO-AUTHORED A PEER REVIEW
5 ARTICLE REGARDING SEX OFFENDER EVALUATIONS; HAVE YOU?

6 A NO, SIR, I HAVE NOT BEEN PRIVILEGED TO DO THAT.

7 Q AND ACTUALLY THIS IS THE FIRST REPORT THAT YOU HAVE
8 PREPARED FOR -- AS A FORENSIC EVALUATION FOR THE CIVIL
9 COMMITMENT OF A SEXUALLY DANGEROUS PERSON; RIGHT?

10 A THAT'S CORRECT.

11 Q IN FACT, YOU ACTUALLY USED A GO-BY REPORT OF ANOTHER
12 FORENSIC EVALUATION TO HELP PREPARE YOU OR HELP TO PUT
13 YOUR REPORT TOGETHER IN THIS CASE; RIGHT?

14 A I AM NOT SURE WHAT YOU MEAN.

15 Q YOU ACTUALLY USED A GO-BY, AN OLDER REPORT THAT
16 SOMEBODY ELSE HAD DONE, A FORENSIC EVALUATION THAT HELPED
17 PUT YOUR REPORT TOGETHER IN THIS CASE; DIDN'T YOU?

18 A WHAT IS A GO-BY?

19 Q YOU USED A FORM -- WELL, LET ME STRIKE THAT. YOU
20 ACTUALLY USED AN OLDER REPORT THAT SOMEBODY ELSE DID TO
21 HELP PUT YOUR REPORT TOGETHER IN THIS CASE; DIDN'T YOU?

22 A YOU MEAN THIS REPORT?

23 Q YES.

24 A I AM NOT SURE I UNDERSTAND WHAT YOU ARE ASKING. THIS
25 IS MY REPORT.

1 Q RIGHT.

2 A THIS IS MY FORM. THIS IS WHAT WE USE.

3 Q NOW, YOUR PRIMARY WORK ON PRESENTENCE EVALUATIONS --

4 WELL, YOU ARE PRIMARILY WORKING ON PRESENTENCE

5 EVALUATIONS IN YOUR WORK NOW?

6 A NO. THAT IS NOT CORRECT.

7 Q OKAY. ISN'T THAT WHAT YOU TOLD ME AT THE DEPOSITION,

8 THAT YOU PRIMARILY WORK ON PRESENTENCE EVALUATIONS?

9 A IT WAS AT THAT TIME, YES, SIR. IT'S NOT CORRECT NOW.

10 Q OKAY. WHAT ABOUT COMPETENCY TO STAND TRIAL? IS THAT

11 DIFFERENT, TOO?

12 A NO, SIR. THAT IS PREDOMINANTLY, RIGHT NOW IN THE

13 PAST MONTH OR MONTH AND A HALF, THAT IS WHAT I HAVE BEEN

14 DOING MORE OF. MY WORK CHANGES, SIR, AS I GO THROUGH,

15 DEPENDING ON WHAT THE COURT ASKS ME TO DO.

16 Q LET'S TAKE A LOOK AT YOUR REPORT. THERE IS A SECTION

17 IN YOUR REPORT TITLED PSYCHIATRIC HISTORY. IT'S ON PAGE

18 3.

19 A YES, SIR.

20 Q DO YOU SEE THAT?

21 A YES, SIR.

22 Q IT INCLUDES SOME INFORMATION THAT HE GAVE YOU DURING

23 YOUR CLINICAL INTERVIEW; RIGHT?

24 A YES, SIR.

25 Q YOU ASKED HIM IF HE THOUGHT HE HAD A MENTAL ILLNESS;

1 RIGHT? AND HE TOLD YOU NO. THAT IS ONE OF THE THINGS
2 YOU PUT IN YOUR PSYCHIATRIC HISTORY?

3 THE COURT: ARE YOU REFERRING, MR. ROYSTER, TO
4 RESPONDENT'S EXHIBIT 1, PAGE 3?

5 MR. ROYSTER: YES, SIR.

6 THE COURT: THANK YOU.

7 MR. ROYSTER:

8 Q UNDER THE HEADING PSYCHIATRIC HISTORY?

9 A OKAY.

10 Q NOW, YOU HAVE INCLUDED INFORMATION THAT YOU ASKED HIM
11 IF HE HAD A MENTAL ILLNESS; RIGHT?

12 A LET ME FINISH. I DON'T QUOTE THAT, BUT I THINK IN
13 THE PROCESS OF GOING THROUGH IT, I WOULD HAVE ASKED THAT
14 QUESTION, YES.

15 Q DO YOU REMEMBER ASKING HIM IF HE HAD A MENTAL
16 ILLNESS?

17 A I NORMALLY DO.

18 Q AND HE TOLD YOU NO; RIGHT?

19 A THEY NORMALLY SAY, YES, I DON'T HAVE A MENTAL
20 ILLNESS.

21 Q BUT MR. ANTONE TOLD YOU, NO, I DON'T; ISN'T THAT
22 RIGHT?

23 A SIR, I DON'T REMEMBER THAT. I DON'T HAVE IT WRITTEN.

24 Q NOW, HE ALSO TOLD YOU, DIDN'T HE, THAT HE BELIEVED HE
25 LEARNED A LOT ABOUT HIS DRINKING AND HIS DRUGS FROM

1 CLASSES IN PRISON; RIGHT?

2 A YES, SIR.

3 Q AND HE ALSO TOLD YOU THAT HE LEARNED ABOUT HIS ANGER
4 AND HOW TO CONTROL IT; RIGHT? HE TOLD YOU THAT?

5 A YES, SIR.

6 Q NOW, YOUR PSYCHIATRIC HISTORY THERE ON YOUR REPORT,
7 THAT IS LIMITED TO THE INFORMATION THAT HE GAVE YOU IN
8 HIS INTERVIEW; RIGHT?

9 A YES AND NO. THE PSYCHIATRIC HISTORY IS -- IT'S MORE
10 ABOUT WHAT HIS HISTORY IS. AND I WILL HAVE OTHER DATA TO
11 ASK ABOUT THAT OR I SHOULD HAVE OTHER DATA, PAST, TO ASK
12 THE KINDS OF QUESTIONS THAT WILL ELICIT THE RESPONSES OF
13 THE KIND OF -- OF HIS HISTORY, SO IN THAT INSTANCE.

14 Q GO AHEAD.

15 A I THINK IN THAT INSTANCE I AM USING A DIALOG. I AM
16 USING AN INTERVIEW PROCESS WITH HIM, YES.

17 Q BUT IN YOUR REPORT TO THIS COURT, THE ONLY
18 INFORMATION YOU HAVE LISTED ABOUT HIS PSYCHIATRIC HISTORY
19 IS THE INFORMATION THAT HE GAVE YOU; RIGHT?

20 A YES.

21 Q AND ACTUALLY IF YOU WILL LOOK DOWN THERE, THE FOURTH
22 LINE AT THE END, MR. ANTONE WAS ASKED IF HE BELIEVED HE
23 HAD A MENTAL ILLNESS; THAT IS WHAT IT SAYS; RIGHT?

24 A YES, IT DOES.

25 Q AND IT SAYS HE REPLIED NO. SO THAT IS IN YOUR

1 REPORT?

2 A IT IS, YES, SIR.

3 Q NOW, YOU DID -- YOU HAVE TESTIFIED TODAY THAT YOU SAW
4 THE PSYCHE EVALUATION FROM DR. GRAY AND SADLER; RIGHT?

5 A YES.

6 Q YOU DIDN'T EVEN MENTION THAT IN YOUR REPORT TO THIS
7 COURT; DID YOU?

8 A NO.

9 Q DID IT NOT HAVE ANY RELEVANCE WHATSOEVER TO YOUR
10 EVALUATION OF MR. ANTONE WITH RESPECT TO THIS, FOR THIS
11 COURT?

12 A IT DOES HAVE RELEVANCE, SIR.

13 Q WHY WAS IT NOT INCLUDED IN YOUR REPORT?

14 MR. ROSS: OBJECTION.

15 THE COURT: OVERRULED.

16 THE WITNESS:

17 A IT WASN'T INCLUDED BECAUSE THE COURT ALREADY HAS THAT
18 INFORMATION.

19 Q NOW, THE -- YOU WILL AGREE, WON'T YOU, THAT THE GRAY
20 AND SADLER REPORT DEALT IN LARGE PART WITH HIS SEXUAL
21 DEVIANCY?

22 A VERY MUCH SO.

23 Q YOU MENTIONED EARLIER THAT THERE WAS NO EVIDENCE OF
24 ANY URGES THAT HE WANTED TO HAVE FORCED SEX. THAT WAS
25 YOUR TESTIMONY; RIGHT? THERE WAS NOTHING?

1 WAS YOUR TESTIMONY THAT THERE IS NO EVIDENCE THAT
2 YOU ARE AWARE OF THAT HE HAS URGES TO FORCED SEX?

3 A WHILE INCARCERATED?

4 Q PERIOD. AT ANY POINT IN HIS LIFE?

5 A I CAN'T ANSWER THAT. I ONLY KNOW WHAT HE IS TELLING
6 ME DURING INCARCERATION. THE OTHER DOCUMENTS WILL ATTEST
7 TO THAT. BUT THE PSYCHIATRIC HISTORY HAS TO DEAL WITH
8 HOW HE IS DURING DURING THE PERIOD OF TIME THROUGH
9 COUNSELORS.

10 Q AND I AM OFF THE PSYCHIATRIC HISTORY NOW. I AM
11 ASKING A SEPARATE QUESTION. YOU TESTIFIED ON DIRECT THAT
12 THERE WAS NOTHING IN THE RECORD THAT YOU WERE AWARE OF
13 THAT INDICATED HE HAD URGES TO FORCED SEX?

14 A YES. IN -- AS INCARCERATED.

15 Q OKAY. SO YOU ARE JUST SAYING WHILE HE HAS BEEN
16 INCARCERATED?

17 A YES, SIR.

18 Q BECAUSE CERTAINLY THE RAPES, THE PRIOR RAPES, WOULD
19 BE INDICATIVE OF URGES TO HAVE FORCED SEX? YOU WILL
20 AGREE WITH THAT?

21 A ARE INDICATIVE OF THAT HE COMMITTED THOSE PARTICULAR
22 CRIMES, YES, BUT I DIDN'T ADDRESS THAT. THAT WAS NOT
23 WHAT I WAS ADDRESSING.

24 Q AND CERTAINLY HIS DECEPTIVE ANSWER ON THE POLYGRAPH
25 THAT HE FANTASIZED ABOUT NONCONSENSUAL ACTIVITY, THAT

1 WOULD BE INDICATIVE OF AT LEAST SOME EVIDENCE THAT HE HAD
2 AN URGE TO HAVE FORCED SEX? YOU WILL AGREE WITH THAT,
3 WON'T YOU?

4 A I WILL AGREE THAT THERE WAS SOME DISCREPANCY IN THE
5 POLYGRAPH, YES, SIR.

6 Q NOW, YOU ADMINISTER THE MMSE, THE MINI MENTAL STATE
7 EXAM?

8 A YES.

9 Q THAT IS DESIGNED TO DETECT GROSS COGNITIVE IMPAIRMENT
10 AND ITS SEVERITY?

11 A YES.

12 Q AND HIS SCORE INDICATED NO GROSS COGNITIVE
13 IMPAIRMENT?

14 A YES.

15 Q AND THIS TEST THOUGH DOESN'T TELL YOU ANYTHING ABOUT
16 HIS AROUSAL TO NONCONSENSUAL SEX; DOES IT?

17 A I AM GLAD YOU ASKED THAT.

18 Q WHAT IS YOUR ANSWER FIRST?

19 A NO. IT HAS NOTHING TO DO WITH THAT.

20 Q DO YOU WANT TO TALK ABOUT IT?

21 A YES, I DO.

22 Q OKAY. GO AHEAD.

23 A IT ALLOWS ME TO KNOW THE CONDITION, THE MENTAL STATE
24 OF THE PERSON I AM TALKING TO AT THE TIME. THAT IS ONE
25 OF THE MOST IMPORTANT THINGS YOU WILL DO IS TO KNOW WHERE

1 YOUR EVALUATEE IS AS YOU ARE TALKING TO THEM.

2 Q IS IT ASSOCIATED IN ANY WAY THAT YOU ARE AWARE OF
3 WITH THE FUTURE RISK OF SEXUAL RECIDIVISM?

4 A YES, SIR.

5 Q CAN YOU TELL US WHAT STUDIES YOU ARE AWARE OF THAT
6 SHOW THAT A SCORE ON THIS TEST IS ASSOCIATED WITH SEXUAL
7 RECIDIVISM?

8 A NO, I CAN'T TELL YOU A STUDY. I CAN TELL YOU WHAT
9 COMMON SENSE SAYS, THAT IF A PERSON BEGINS -- IS
10 PSYCHOTIC AND YOU IDENTIFY HIM AS PSYCHOTIC, THEN ALL
11 BETS ARE OFF AS FAR AS TRYING TO TALK ABOUT SEXUAL
12 RECIDIVISM WITH HIM.

13 Q YOU USED THE NAVACO ANGER SCALE; RIGHT?

14 A YES, I DID.

15 Q THIS IS A TEST DESIGNED TO ASSESS ANGER AS A PROBLEM
16 OF PSYCHOLOGICAL FUNCTIONING AND PHYSICAL HEALTH AND TO
17 ASSESS THERAPEUTIC CHANGE; RIGHT?

18 A YES, I DID.

19 Q HE SCORED IN THE AVERAGE RANGE OVERALL?

20 A YES, I DID. YES, HE DID.

21 Q AND THIS RANGE INDICATED HE EXPERIENCES AN EMOTIONAL
22 LIFE AS WOULD BE NORMALLY EXPECTED WITHIN THE AVERAGE
23 POPULATION?

24 A THAT'S RIGHT.

25 Q AND HE SCORED IN THE AVERAGE RANGE ON THE AROUSAL

1 SCALE; RIGHT?

2 A IF THAT IS WHAT IT SAYS, YES, SIR.

3 Q WELL, IS THAT WHAT IT SAYS?

4 A LET ME SEE IT. CAN YOU PUT THAT UP FOR ME, PLEASE?

5 MR. ROYSTER: I DON'T HAVE IT.

6 THE WITNESS: I HAVE IT HERE.

7 THE COURT: I BELIEVE THE PAGE HE IS REFERRING
8 TO, DR. DAUM, IS PAGES 6 THROUGH 7.

9 THE WITNESS: YES.

10 MS. ALLEN: YOUR HONOR, MAY I PLACE IT ON THE
11 ELMO?

12 THE COURT: YOU MAY.

13 THE WITNESS: WHAT WAS YOUR QUESTION AGAIN,
14 SIR?

15 MR. ROYSTER:

16 Q HE SCORED IN THE AVERAGE RANGE ON THE AROUSAL SCALE?

17 A THAT IS CORRECT.

18 Q THAT IS AROUSAL WITH RESPECT TO ANGER; CORRECT?

19 A THAT'S CORRECT.

20 Q NOT SEXUAL AROUSAL, JUST SO WE ARE CLEAR.

21 A THAT'S RIGHT.

22 Q NOW, THIS TEST DOESN'T TELL YOU ANYTHING ABOUT HIS
23 AROUSAL TO NONCONSENSUAL SEX; DOES IT?

24 A IT'S NOT DESIGNED TO DO THAT.

25 Q NOW, YOU -- IN ORDER FOR THIS TEST TO HAVE ANY

1 VALIDITY, YOU HAVE TO RELY ON HIM TELLING YOU THE TRUTH;
2 RIGHT?

3 A YES.

4 Q AND, OF COURSE, THERE IS CERTAINLY SOME EVIDENCE AT
5 LEAST FROM THE GRAY AND SADLER REPORT THAT HE IS
6 DECEPTIVE AT TIMES; RIGHT?

7 A THE TEST IS AS HE IS NOW.

8 Q RIGHT. I AM TALKING ABOUT HIS DECEPTION. YOU HAVE
9 GOT TO RELY ON HIS ANSWERS TO BE ACCURATE; CORRECT?

10 A YES, SIR.

11 Q BUT THERE IS EVIDENCE THAT HE HAS CERTAINLY LIED IN
12 THE PAST ABOUT THINGS. YOU WOULD AGREE WITH THAT; RIGHT?

13 A I WOULD THINK THAT -- YES, I WOULD AGREE WITH THAT.

14 Q THIS TEST, IS IT ASSOCIATED IN ANY WAY THAT YOU ARE
15 AWARE OF WITH FUTURE RISK OF SEXUAL RECIDIVISM?

16 A YES, SIR.

17 Q CAN YOU IDENTIFY THE STUDIES THAT SHOW THIS TEST --

18 A NO, SIR.

19 Q I AM SORRY. JUST A SECOND. CAN YOU IDENTIFY THE
20 STUDIES THAT SHOW THIS TEST IS ASSOCIATED IN ANY WAY WITH
21 SEXUAL RECIDIVISM?

22 A NO.

23 Q AND IS THAT JUST A COMMON SENSE KIND OF THING AGAIN?

24 A NO, SIR.

25 Q HOW DOES HIS AROUSAL TO ANGER AFFECT HIS SEXUAL

1 RECIDIVISM?

2 A YOU WOULD THINK THAT A PERSON THAT IS ANTISOCIAL OR
3 BORDERLINE HAS AN ANGER REGULATION, EMOTIONAL REGULATION
4 DYSFUNCTION. YOU WOULD THINK A PERSON THAT HAS THAT KIND
5 OF HISTORY, BE IT SEXUAL, BE IT ANY KIND OF HISTORY,
6 WOULD HAVE AN ANGER ISSUE. PROBABLY HE HAD AN ANGER
7 ISSUE. BUT OVER A PERIOD OF TIME, BEING IN
8 INCARCERATION, YOU WOULD EXPECT SOME KIND OF TREATMENT.
9 THIS WOULD SHOW TREATMENT.

10 IT SAYS AT THIS POINT IN TIME THIS PARTICULAR
11 INDIVIDUAL DOES NOT HAVE AN ANGER ISSUE. THAT IS
12 IMPORTANT IN SETTING UP TREATMENT PROGRAMS, IN SETTING UP
13 TALKING ABOUT RECIDIVISM, IN KNOWING THE INDIVIDUAL SO
14 YOU CAN ADDRESS THE PROBLEM.

15 Q BUT YOU ARE NOT AWARE OF ANY RESEARCH OR STUDIES THAT
16 SHOW THAT A SCORE ON THIS TEST IS ASSOCIATED WITH SEXUAL
17 RECIDIVISM?

18 A I AM AWARE OF STUDIES THAT WILL SHOW THAT ANTISOCIAL
19 PERSONALITY AND BORDERLINE, WHICH IS CONNECTED TO THIS,
20 IS IMPORTANT IN RECIDIVISM. YES, SIR, I DO THAT.

21 Q NOW, YOU ARE FAMILIAR WITH THE MCMI TEST?

22 A YES.

23 Q AND THAT IS ACTUALLY A TEST FOR -- USED TO ASSESS
24 PERSONALITY DISORDERS; RIGHT?

25 A YES, IT IS.

1 Q YOU DIDN'T USE THAT THOUGH; DID YOU?

2 A NO, SIR, I DID NOT.

3 Q NOW, YOU HAVE DIAGNOSED MR. ANTONE WITH POLYSUBSTANCE
4 DEPENDENCE AND FROTTEURISM AND BORDERLINE PERSONALITY
5 DISORDER WITH ANTISOCIAL FEATURES; IS THAT RIGHT?

6 A I DID.

7 Q JUST SO WE ARE CLEAR, YOUR TESTIMONY -- THAT IS --
8 THOSE DIAGNOSES ARE THE SAME DIAGNOSES THAT YOU HAD WHEN
9 YOU INITIALLY DID THIS REPORT; IS THAT RIGHT?

10 A I BELIEVE SO.

11 Q AND SO IT HASN'T CHANGED SINCE WE LAST SPOKE AT YOUR
12 DEPOSITION?

13 A I DON'T BELIEVE SO IT HAS.

14 Q NOW, WITH RESPECT TO THE ALCOHOL, HE -- YOU HEARD HIM
15 TESTIFY YESTERDAY THAT HE DESCRIBES HIMSELF AS AN
16 ALCOHOLIC; RIGHT?

17 A YES.

18 Q AND HE TOLD YOU EVERYBODY WAS DRUNK AT HIS HOUSE WHEN
19 HE WAS GROWING UP?

20 A YES.

21 Q IN FACT, HE STARTED DRINKING WHEN HE WAS 11 OR 12?

22 A YES. EARLY ONSET.

23 Q AND IT WASN'T LONG AFTER THAT THAT HE STARTED HAVING
24 BLACKOUTS; RIGHT?

25 A THAT IS WHAT HE SAID.

1 Q AND HE COULDN'T REMEMBER WHAT HE DID THE NIGHT BEFORE
2 IN MANY INSTANCES?

3 A THAT IS WHAT HE SAID.

4 Q HE WAS EXPELLED HIS FRESHMAN YEAR OF HIGH SCHOOL FOR
5 DRINKING?

6 A THAT IS WHAT HE SAID.

7 Q THAT WAS ABOUT THE TIME THAT HE STARTED DRINKING
8 REALLY HEAVILY; IS THAT RIGHT?

9 A I WOULD ASSUME SO, YES. THAT IS WHAT HE IS TALKING
10 ABOUT. HE SAID THAT AS AN EARLY -- IN EARLY SCHOOL, HE
11 STARTED TO DRINK. AS HE GOT OLDER, HE DRANK MORE HEAVILY
12 AND BEGAN TO USE DRUGS.

13 Q AND THAT WAS ABOUT THE TIME OF HIS FRESHMAN YEAR IN
14 HIGH SCHOOL?

15 A YES, SIR.

16 Q AND THAT WAS ABOUT THE SAME TIME HE STARTED USING
17 DRUGS?

18 A IF I RECALL CORRECTLY, THAT WAS WHEN HE STARTED TO
19 HUFF, MAYBE A LITTLE EARLIER.

20 Q NOW, YOU DIDN'T INCLUDE IN YOUR REPORT THAT HE DOES
21 QUALIFY FOR THE DIAGNOSIS OF ALCOHOL DEPENDENCE IN A
22 CONTROLLED ENVIRONMENT. YOU DIDN'T INCLUDE THAT IN YOUR
23 REPORT, THAT QUALIFIER IN THE REPORT; DID YOU?

24 A NO, I DID NOT.

25 Q BUT HE DOES QUALIFY FOR THAT DIAGNOSIS; DOESN'T HE?

1 A HE DOES.

2 Q BUT YOU DIDN'T INCLUDE IT IN YOUR REPORT; RIGHT?

3 A I DID NOT.

4 Q AND THAT IS THE MOST SEVERE THAT YOU CAN BE WITH
5 REGARD TO ALCOHOL DEPENDENCE; ISN'T IT?

6 A HOW DO YOU MEAN SEVERE?

7 Q WELL, I AM USING THAT WORK BECAUSE THAT IS WHAT YOU
8 TOLD ME. WE AGREE THAT YOU TESTIFIED AT YOUR DEPOSITION
9 THAT THAT IS THE MOST SEVERE YOU CAN BE WITH REGARD TO
10 ALCOHOL DEPENDENCE?

11 A YES.

12 Q AND THE SPECIFIER IN A CONTROLLED ENVIRONMENT IS USED
13 IF THE INDIVIDUAL WITH ALCOHOL DEPENDENCE IS IN AN
14 ENVIRONMENT WHERE ACCESS TO ALCOHOL AND SUBSTANCE IS
15 RESTRICTED. THAT IS WHAT THAT MEANS; RIGHT?

16 A THAT IS WHAT THAT MEANS. CAN I FINISH?

17 Q SURE.

18 A IT ALSO CAN MEAN THAT YOU ARE SAYING THE PERSON WOULD
19 CONTINUE TO USE ALCOHOL IN A CONTROLLED ENVIRONMENT. I
20 DID NOT FIND THAT.

21 Q AND IT ACTUALLY MEANS THAT NO MATTER WHERE HE IS, HE
22 CRAVES ALCOHOL?

23 A YES.

24 Q AND HE TOLD YOU HE DOESN'T IT; RIGHT?

25 A THAT'S CORRECT.

1 Q BUT YOU STILL BELIEVE HE QUALIFIES FOR THIS DIAGNOSIS
2 THAT MEANS NO MATTER WHERE HE IS, HE CRAVES ALCOHOL?

3 A BASED ON HIS TESTIMONY, YES.

4 Q NOW, IT'S ALSO YOUR OPINION THAT IF HE DOES GET OUT,
5 THERE IS NO REASON TO BELIEVE HE WOULD RELAPSE AND START
6 DRINKING AGAIN? THAT IS YOUR OPINION; ISN'T IT?

7 A IT IS.

8 Q THERE IS NO REASON TO BELIEVE HE WOULD RELAPSE?

9 A RELAPSE WITH SEXUAL?

10 Q THAT IS NOT WHAT I ASKED.

11 A OKAY. ASK IT DIFFERENTLY.

12 A THERE IS NO REASON TO BELIEVE HE WOULD RELAPSE AND
13 START DRINKING AGAIN? THAT IS WHAT YOU TESTIFIED TO AT
14 THE DEPOSITION; ISN'T IT?

15 A THERE IS NO REASON TO BELIEVE THAT IF HE IS IN
16 TREATMENT.

17 Q WELL, DR. DAUM, I JUST WANT TO MAKE SURE I UNDERSTAND
18 YOUR TESTIMONY. AT LEAST FROM THE DEPOSITION, YOU TOLD
19 ME THERE IS NO REASON TO BELIEVE HE WOULD RELAPSE AND
20 START DRINKING AGAIN, PERIOD. THAT IS WHAT YOU TESTIFIED
21 TO AT YOUR DEPOSITION?

22 A I CERTAINLY DID.

23 Q NOW, YOU BELIEVE THAT PRISON HAS PROVIDED STRUCTURE
24 FOR HIM; RIGHT?

25 A YES, IT HAS.

1 Q YOU BELIEVE PRISON HAS PROVIDED AN ENVIRONMENT FOR
2 HIM TO LEARN ABOUT HIMSELF AND TO DEVELOP SKILLS?

3 A YES, I DO.

4 Q NOW, YOU WILL AGREE, WON'T YOU, THAT HE OFFENDED WHEN
5 HE WAS INTOXICATED?

6 A YES.

7 Q AND PART OF THE REASON, IN YOUR OPINION, THAT HE
8 BECAME INTOXICATED WAS BECAUSE HE LACKED SOCIAL SKILLS;
9 IS THAT RIGHT?

10 A YES.

11 Q YOU BELIEVE THAT PART OF THE REASON HE EXPRESSED HIS
12 ANGER -- WELL, HE EXPRESSED HIS ANGER THROUGH SUBSTANCE
13 ABUSE AND ALCOHOL ABUSE; IS THAT RIGHT?

14 A YES.

15 Q SO CLEARLY IN THE PAST, HE HAD ISSUES WITH HIS ANGER;
16 IS THAT YOUR TESTIMONY?

17 A YES. YES. IF YOU RECALL, SIR, THAT IS WHY I DID THE
18 NAVACO.

19 Q WELL, AND HIS ANGER WAS FURTHER EXPRESSED THROUGH HIS
20 SEXUAL OFFENSES; RIGHT?

21 A YES.

22 Q NOW, WHEN YOU ASKED HIM IN YOUR INTERVIEW IF HE WOULD
23 HAVE CONTINUED WITH HIS SEX OFFENSES HAD HE NOT BEEN
24 ARRESTED, HE SAID I THINK AS LONG AS I WAS DRINKING AND
25 DRUGGING, I WOULD HAVE DONE THOSE THINGS. THAT IS WHAT

1 HE TOLD YOU; RIGHT?

2 A THAT IS EXACTLY CORRECT.

3 Q AND HE TOLD YOU THAT IT WASN'T NECESSARILY ABOUT THE
4 SEX, BUT IT WAS ABOUT BEING AN ALCOHOLIC AND NOT BEING IN
5 CONTROL?

6 A YES.

7 Q SO CERTAINLY HE HAS ACKNOWLEDGED THAT AT LEAST IN THE
8 PAST, HE WAS NOT IN CONTROL?

9 A THAT IS EVIDENT, YES.

10 Q NOW, HE HAS ONLY COMPLETED ONE 40-HOUR SUBSTANCE
11 ABUSE CLASS; RIGHT?

12 A THAT IS WHAT BOP DOES.

13 Q HE HAS ONLY COMPLETED ONE 40-HOUR SUBSTANCE ABUSE
14 CLASS; IS THAT TRUE?

15 A THAT IS WHAT BOP DOES; YES, SIR.

16 Q HE HAS NEVER HAD ANY SEX OFFENDER TREATMENT; RIGHT?

17 A THAT IS MY UNDERSTANDING, YES.

18 Q DO YOU HAVE ANY REASON TO BELIEVE THAT YOUR
19 UNDERSTANDING IS INCORRECT?

20 A NO, SIR. I DON'T HAVE A REASON TO BELIEVE IT'S
21 INCORRECT.

22 Q OKAY.

23 A OKAY.

24 Q AND YOU BELIEVE THAT HE WOULD BENEFIT FROM ADDITIONAL
25 TREATMENT FOR ALCOHOL AND SEX OFFENDER TREATMENT; DON'T

1 YOU?

2 A THAT SHOULD BE IN HIS RELAPSE PREVENTION PLAN.

3 Q WHICH HE DOESN'T HAVE; DOES HE?

4 A NO. I WOULD NOT EXPECT HIM TO HAVE ONE.

5 Q NOW, YOU WILL AGREE, WON'T YOU, DR. DAUM, THAT IN THE
6 PAST HE DID NOT HAVE EMOTIONAL REGULATION; RIGHT?

7 A YES, SIR. I WOULD AGREE WITH THAT.

8 Q AND IN FACT, WHATEVER HE FELT, HE JUST DID IT; ISN'T
9 THAT TRUE?

10 A YES, SIR.

11 Q AND HE HAS AN EXTENSIVE PATTERN OF IMPULSIVITY WITH
12 SUBSTANCE ABUSE AND SEXUAL RELATIONS?

13 A VERY MUCH SO.

14 Q IN OTHER WORDS, HE HAD SERIOUS DIFFICULTY CONTROLLING
15 HIMSELF IN THE PAST; DIDN'T HE?

16 A AS EVIDENCED.

17 Q BUT YOU ACTUALLY BELIEVE HE CAN CONTROL HIMSELF NOW;
18 RIGHT? IS THAT YOUR TESTIMONY?

19 A I BELIEVE IN CHANGE, YES, SIR, I DO.

20 Q DR. DAUM, YOU DON'T HAVE AN OPINION ABOUT WHETHER IF
21 HE RELAPSES WITH DRUGS OR ALCOHOL THAT THAT WILL AFFECT
22 HIS LIKELIHOOD TO REOFFEND; DO YOU?

23 A I FIND THAT HARD TO ANSWER, SIR. I DON'T REALLY KNOW
24 HOW TO ANSWER THAT.

25 Q DO YOU HAVE AN OPINION AS WHETHER IF HE RELAPSES AND

1 STARTS DRINKING AGAIN, WILL YOU AGREE THAT THAT WILL MAKE
2 HIM MORE LIKELY TO RECIDIVATE?

3 A WELL, I AM NOT SURE THAT THAT IS A YES OR NO ANSWER.
4 I THINK THERE IS CERTAIN CIRCUMSTANCES, HYPOTHETICALLY.
5 HYPOTHETICALLY, IF HE IS INVOLVED IN SEXUAL OFFENDER
6 TREATMENT AND GOES TO AA, AND EVERYTHING WORKS FINE, BUT
7 WHAT IF HE GOES TO SEXUAL OFFENDER TREATMENT AND BEGINS
8 TO CHANGE HIS PATTERNS AND RELAPSES WITH THE ALCOHOL. I
9 DON'T THINK THAT IS A FOR CERTAIN FACT IS WHAT I AM
10 TRYING TO SAY.

11 Q WILL YOU ACKNOWLEDGE AT LEAST THAT IF HE STARTS
12 DRINKING AGAIN, HIS RISK TO COMMIT ANOTHER SEX OFFENSE IS
13 GOING TO INCREASE?

14 A CERTAINLY.

15 Q NOW, YOU HAVE DIAGNOSED FROTTEURISM. THAT IS A
16 PARAPHILIA; RIGHT?

17 A YES, SIR.

18 Q IT'S A SEXUAL DISORDER; RIGHT?

19 A YES, SIR.

20 Q AND YOU WILL AGREE THAT IT'S A SERIOUS MENTAL
21 ILLNESS, ABNORMALITY OR DISORDER, WON'T YOU?

22 A I WILL.

23 Q INCLUDING UNDER THE ADAM WALSH ACT; RIGHT?

24 A YES.

25 Q AND YOU AGREE THAT HE, IN THE PAST, HAS EXHIBITED

1 ELEMENTS OF SEXUAL DEVIANCE; RIGHT?

2 A YES.

3 Q NOW, FROTTEURISM IS UNWANTED TOUCHING; RIGHT?

4 A YES, SIR.

5 Q AND DID YOU HEAR DR. GUTIERREZ'S EXPLANATION TO THE
6 COURT ABOUT WHAT FROTTEURISM IS?

7 A THAT WAS A GOOD EXPLANATION.

8 Q SO YOU WILL AGREE THAT DR. GUTIERREZ'S EXPLANATION
9 WAS FAIR AND ACCURATE?

10 A OF COURSE.

11 Q NOW, BUT YOU BELIEVE, DON'T YOU, THAT FROTTEURISM CAN
12 LAST UP TO 30 MINUTES?

13 A I BELIEVE FROTTEURISM CAN GO AS LONG AS YOU WANT IT
14 TO GO.

15 Q BUT YOU BELIEVE THAT THE ACT ITSELF CAN ACTUALLY
16 HAPPEN FOR UP TO 30 MINUTES?

17 A CERTAINLY.

18 Q THAT IS DIFFERENT FROM WHAT DR. GUTIERREZ SAID; ISN'T
19 IT?

20 A BUT DR. GUTIERREZ, HIS EXPLANATION IS VALID, BUT MINE
21 IS ALSO VALID. I AM ADDING TO IT.

22 Q ADDING TO THE ELEMENT OF FROTTEURISM THAT IT CAN LAST
23 -- THE ACT CAN LAST UP TO --

24 A THERE IS NO REASON TO BELIEVE IT CANNOT LAST THAT.

25 Q GO AHEAD.

1 A I AM DONE.

2 Q ALL RIGHT.

3 A AND I APOLOGIZE, SIR, FOR INTERRUPTING YOU.

4 Q THAT IS OKAY. YOU TESTIFIED AT YOUR DEPOSITION THAT
5 FROTTEURISM IS A MOOD DISORDER; DIDN'T YOU?

6 A I DID.

7 Q IT'S NOT A MOOD DISORDER; IS IT?

8 A IT IS A MOOD DISORDER.

9 Q IT'S YOUR TESTIMONY TO THIS COURT THAT FROTTEURISM IS
10 A MOOD DISORDER?

11 A IT'S A PARAPHILIA. IT EXISTS IN YOUR MIND. IT'S A
12 MOOD DISORDER. IT'S NOT A PERSONALITY DISORDER. IT'S
13 CODED ON AXIS 1. IT'S SOMETHING YOU DEAL WITH. IT'S AN
14 EMOTIONAL MOOD DYSFUNCTION, YES.

15 Q SO IF I LOOKED UP -- IF I GOT A COPY OF THE DSM, I
16 WOULD FIND FROTTEURISM UNDER MOOD DISORDERS?

17 A NO, SIR. YOU WOULD FIND FROTTEURISM UNDER
18 PARAPHILIA.

19 Q NOT MOOD DISORDERS?

20 A MOOD DISORDERS IS -- SIR, YOU EITHER HAVE A MOOD
21 DISORDER OR PERSONALITY DISORDER. THEY ARE SEPARATE.
22 THAT IS WHAT I AM TRYING TO SAY. IT'S LIKE DEPRESSION.
23 IT'S LIKE MENTAL RETARDATION. IT'S LIKE -- I DON'T KNOW
24 HOW TO EXPLAIN THAT.

25 Q YOU WILL AGREE, WON'T YOU, THAT THE DISORDERS, THE

1 PARAPHILIC DISORDERS TEND TO BE CHRONIC AND LIFELONG;
2 RIGHT?

3 A YES.

4 Q BUT YOU TESTIFIED AT YOUR DEPOSITION WITH RESPECT TO
5 FROTTEURISM THAT IT CAN JUST KIND OF COME AND GO?

6 A YES.

7 Q SO IT'S NOT CHRONIC?

8 A NOT IF IT'S -- NOT IF YOU GO THROUGH THERAPY.

9 Q SO YOU DISAGREE THAT IT'S CHRONIC, IT TENDS TO BE
10 CHRONIC AND LIFELONG?

11 A NO, I DON'T DISAGREE WITH THAT AT ALL. WHAT I AM
12 SAYING IS JUST BECAUSE IT'S WRITTEN THERE DOESN'T MEAN
13 THAT ALL OF THE CASES ARE THE SAME.

14 Q NOW, YOU WILL AGREE THAT THE BEHAVIOR USUALLY OCCURS
15 IN CROWDED PLACES; WON'T YOU?

16 A YES.

17 Q AND RAPE IS NOT PART OF FROTTEURISM?

18 A NO.

19 Q SO EVEN THOUGH HE HAS RAPED MORE VICTIMS THAN HE HAS
20 TOUCHED, YOU BELIEVE THAT FROTTEURISM IS THE APPROPRIATE
21 DIAGNOSIS?

22 A I BELIEVE IT'S PART OF THE APPROPRIATE DIAGNOSIS,
23 YES, SIR.

24 Q WHAT IS THE OTHER PART?

25 A I GAVE THEM TO YOU. ANTISOCIAL, POLYSUBSTANCE. YOU

1 HEARD OTHER PSYCHOLOGISTS TALK ABOUT DEPRESSION.

2 Q AND, WELL, I HEARD OTHER ONES TALK ABOUT IT, BUT YOU
3 DIDN'T DIAGNOSIS ANY DEPRESSION?

4 A NO, BECAUSE AT THE TIME IT WASN'T PRESENTED, BUT
5 PERHAPS THE OTHER PSYCHOLOGISTS SAW THAT.

6 Q NOW, DR. GUTIERREZ ALSO TESTIFIED THAT IT USUALLY
7 OCCURS IN CROWDED PLACES?

8 A YES.

9 Q NONE OF HIS OFFENSES OCCURRED IN CROWDED PLACES; DID
10 THEY?

11 A THAT'S CORRECT. BUT IT DOESN'T HAVE TO BE IN A
12 CROWDED PLACE.

13 Q SURE.

14 A IT USUALLY DOES.

15 Q NOW, MR. ANTONE ACTUALLY TOLD YOU HE DIDN'T HAVE
16 FROTTEURISM; DIDN'T HE?

17 A I DON'T RECALL THAT, SIR.

18 Q YOU TESTIFIED AT YOUR DEPOSITION, DIDN'T YOU, THAT
19 YOU ASKED HIM IF HE HAD FROTTEURISM AND HE TOLD YOU NO?

20 A DO YOU HAVE -- IS THAT -- DID I SAY THAT IN THE
21 DEPOSITION? BECAUSE I AM NOT -- I DON'T EVEN THINK THAT
22 MR. ANTONE EVEN KNOWS WHAT THAT WORD MEANS.

23 Q WELL, I ACTUALLY ASKED YOU IN THE DEPOSITION IF YOU
24 EXPLAINED IT TO HIM AND YOU SAID YES?

25 A WELL, YES, I EXPLAINED IT TO HIM, BUT I DIDN'T USE

1 THE WORD. I SAID IS THAT WHAT YOU ARE DOING, AND HE SAID
2 YES.

3 Q NO. HE TOLD YOU THAT HE DIDN'T DO THAT?

4 A NO. HERE IS HOW THIS WENT. I ASKED -- I ASKED, SO
5 WHAT ARE YOU DOING? AND HE IS TELLING ME THAT. AND I AM
6 SAYING SO YOU ARE TOUCHING, AND HE SAID, NO, I AM NOT.
7 BUT THAT IS WHAT HE WAS DOING.

8 Q YOU BROUGHT UP A GOOD POINT, DR. DAUM, BECAUSE HIS
9 MEMORY WAS A LOT BETTER WITH YOU THAN IT WAS IN COURT
10 YESTERDAY; WASN'T IT?

11 A YES, IT WAS. I NOTICED THAT, YES.

12 Q IN FACT, YOU TOLD ME AT YOUR DEPOSITION, DIDN'T YOU,
13 THAT HE ADMITTED TO ALL THE CHARGES; RIGHT? RIGHT?

14 A YES, SIR AND HE ALSO TOLD ME --

15 Q AND YOU ALSO --

16 MS. ALLEN: OBJECTION.

17 THE COURT: LET HIM FINISH. HE WAS NOT
18 FINISHED WITH HIS ANSWER.

19 MR. ROYSTER: I AM SORRY. I DIDN'T REALIZE
20 YOU WERE STILL GOING.

21 Q GO AHEAD.

22 A LET ME FINISH. WHAT HE SAID TO ME WAS HE STARTS AS
23 HIS CUSTOM, HE USES THE WORD "PROBABLY". PROBABLY I WAS
24 DRUNK AND IF THEY SAID I DID IT, THEN THAT IS PROBABLY
25 WHAT I DID.

1 NOW, THAT WAS HOW THE QUESTIONS WENT. BECAUSE HE
2 TELLS ME I HAVE NO REASON TO BELIEVE THAT THEY WOULD LIE
3 ABOUT THIS.

4 Q AND YOU ALSO TOLD ME AT YOUR DEPOSITION THAT HE
5 ACTUALLY DESCRIBED THE EVENTS. YOU TOLD ME THAT AT YOUR
6 DEPOSITION; DIDN'T YOU?

7 A YES.

8 Q SO HE DESCRIBED THE EVENTS TO YOU?

9 A HE KNEW WHERE HE WAS, YES.

10 Q HE DESCRIBED THE EVENTS THAT HAD OCCURRED?

11 A HE KNEW WHERE HE WAS AND HE SAYS, LIKE I WAS
12 DRINKING. I WAS IN THIS HOUSE. AND THAT IS THE EVENT.
13 AND IF THEY SAID I DID THAT, THEN I PROBABLY DID.

14 Q YOU HEARD HIM YESTERDAY DENY THAT HE RAPED THE GIRL
15 FROM 1990; DIDN'T YOU?

16 A I DID.

17 Q AND THAT IS SIGNIFICANT TO YOU DENYING A RAPE WHEN
18 YOU DID IT; THAT IS SIGNIFICANT; ISN'T IT?

19 A IT'S SIGNIFICANT -- IT'S SIGNIFICANT IF YOU KNEW THAT
20 HE IS LYING ABOUT HIS PERCEPTION OF WHAT HAPPENED. IF HE
21 IS COVERING FOR SOMETHING OR HE IS SAYING I DIDN'T DO
22 THAT BECAUSE IT WASN'T REALLY RAPE, THEN THAT IS A
23 DIFFERENT PERCEPTION.

24 Q YOU DID NOT DIAGNOSIS HIM WITH PARAPHILIA NOT
25 OTHERWISE SPECIFIED, NONCONSENT; RIGHT?

1 A NO, SIR, I DID NOT.

2 Q AND YOU DID ASK HIM IF HE WAS AROUSED TO FORCED SEX;
3 DIDN'T YOU?

4 A I AM GOING TO HAVE TO SAY I DON'T REMEMBER YES OR NO
5 TO THAT. DO YOU HAVE IT IN MY DEPOSITION?

6 Q I DO. DID YOU ASK HIM -- THIS IS THE DEPOSITION --
7 DID YOU ASK HIM -- THIS IS MY QUESTION. I AM SORRY. DID
8 YOU ASK HIM DURING YOUR INTERVIEW IF HE WAS AROUSED TO
9 FORCED SEX? ANSWER: YES, I DID.

10 A ALL RIGHT.

11 Q AND HE TOLD YOU NO; RIGHT?

12 A YES.

13 Q AND YOU DON'T BELIEVE THAT IT'S THE FORCE THAT TURNED
14 HIM ON; DO YOU?

15 A NO, I DO NOT.

16 Q YOU BELIEVE THAT THE FORCE WAS JUST NEEDED IN ORDER
17 TO ACCOMPLISH WHAT HE WANTED TO DO ANYWAY?

18 A I BELIEVE THE FORCE WAS NECESSARY TO ACCOMPLISH WHAT
19 HE WANTED TO DO AT THAT PARTICULAR TIME, YES.

20 Q NOW, PART OF THE REASON THAT YOU DIDN'T DIAGNOSE
21 PARAPHILIA NOT OTHERWISE SPECIFIED, NONCONSENT, IS
22 BECAUSE YOU THINK THAT THAT DIAGNOSIS ACTUALLY TALKS
23 ABOUT CHILDREN; RIGHT?

24 A NO.

25 Q YOU DON'T THINK THAT?

1 A NO. I DON'T THINK THAT.

2 Q SO AT WHAT POINT DID YOU LEARN THAT THAT -- FROM THE
3 TIME OF YOUR DEPOSITION WHEN YOU TOLD ME THAT THAT
4 APPLIES TO CHILDREN, TO NOW --

5 A PARAPHILIA? I AM SORRY.

6 Q I AM SORRY.

7 A SAY IT AGAIN.

8 Q THE DEFINITION OF PARAPHILIA NOT OTHERWISE SPECIFIED,
9 NONCONSENT --

10 A PARAPHILIA, YOU ARE SAYING? LET ME BACK UP TO BE
11 SURE I AM HEARING YOU CORRECTLY. ARE YOU SAYING
12 PEDOPHILIA, OR ARE YOU SAYING PARAPHILIA?

13 Q I AM SAYING PARAPHILIA, NOT OTHERWISE SPECIFIED,
14 NONCONSENT. YOU TESTIFIED AT YOUR DEPOSITION THAT THE
15 REASON YOU DIDN'T DIAGNOSE THAT IS BECAUSE YOU THINK THAT
16 DEALS WITH CHILDREN?

17 A THEN I MISSPOKE. THAT IS NOT CORRECT.

18 Q JUST SO WE ARE CLEAR, YOU MISSPOKE WHEN YOU SAID
19 PARAPHILIA NOT OTHERWISE SPECIFIED BEGINS TO TALK ABOUT
20 PEDOPHILIC TYPE ACTIVITIES. IT TALKS ABOUT AGES AND
21 DIFFERENCE IN AGES, AND I DIDN'T HAVE THE DATA THAT WOULD
22 GIVE THAT. IS THAT YOUR TESTIMONY; YOU MISSPOKE?

23 A IT IS. CAN I PUT AN ADDENDUM TO THAT?

24 THE COURT: YOU MAY, SIR.

25 THE WITNESS: IN -- SOMETIMES -- AND YOU HEARD

1 THE LAST TWO DAYS, THERE IS DISCREPANCY WITH AGE. THAT
2 CAN COVER PART OF PEDOPHILIA IF IT'S NOT A CONSTANT
3 REOCCURRING PATTERN OR JUST PARTS OF IT AND THERE ARE
4 OTHER PARTS OF A PARAPHILIA THAT HE QUALIFIES FOR. IT'S
5 A NICE CATCH ALL.

6 MR. ROYSTER:

7 Q THE PARAPHILIA NOT OTHERWISE SPECIFIED, NONCONSENT,
8 IS A NICE CATCH ALL?

9 A IT'S A NICE CATCH ALL, YES.

10 Q DO YOU BELIEVE THAT PARAPHILIA NOT OTHERWISE
11 SPECIFIED, NONCENSENT, IS A VALID DIAGNOSIS?

12 A I DON'T USE THAT, NO. I DON'T USE THAT.

13 Q BUT IS IT A VALID DIAGNOSIS?

14 A IT'S IN THE DSM. IT'S ALLOWED TO BE USED. THE
15 NONCONSENT IS NOT IN THE DSM.

16 Q I AM ASKING YOU THOUGH IF YOU BELIEVE THAT PARAPHILIA
17 NOT OTHERWISE SPECIFIED, NONCONSENT, IS A VALID
18 DIAGNOSIS?

19 A NOT THE WAY YOU ARE STATING IT NO, I DO NOT BELIEVE
20 THAT IS A VALID DIAGNOSIS.

21 Q I TAKE IT THERE ARE PEOPLE IN KANSAS THAT ARE CIVILLY
22 COMMITTED THAT ARE DIAGNOSED WITH PARAPHILIA NOT
23 OTHERWISE SPECIFIED, NONCONSENT? THAT IS TRUE, ISN'T IT?

24 A I DON'T KNOW OF THAT, NO, SIR. I DON'T. I KNOW
25 PARAPHILIA NOS, BUT I AM NOT AWARE OF THE NONCONSENT.

1 Q SO THERE ARE PEOPLE IN KANSAS THAT ARE DIAGNOSED WITH
2 PARAPHILIA NOT OTHERWISE SPECIFIED THAT ARE CIVILLY
3 COMMITTED AT THE HOSPITAL WHERE YOU WORK?

4 A YES.

5 Q YOU JUST DON'T KNOW IF THEY HAVE THE QUALIFIER OF
6 NONCONSENT?

7 A I DON'T KNOW THAT -- I DON'T KNOW OF ANYONE THAT DOES
8 HAVE THAT.

9 Q AT YOUR FACILITY?

10 A AT THE FACILITY THAT I WORK AT, YES.

11 Q NOW, THE BORDERLINE PERSONALITY DISORDER, YOU BELIEVE
12 THIS IS A SERIOUS MENTAL DISORDER, ILLNESS OR
13 ABNORMALITY; RIGHT?

14 A I DO. IT'S A PERSONALITY DISORDER, YES.

15 Q BUT IT TOO, LIKE FROTTEURISM, IS A SERIOUS MENTAL
16 ILLNESS, ABNORMALITY OR DISORDER?

17 A IT IS.

18 Q AND A PERSON WITH BORDERLINE PERSONALITY DISORDER HAS
19 MARKED IMPULSIVITY. YOU WILL AGREE WITH THAT, WON'T YOU?

20 A YES.

21 THE COURT: MR. ROYSTER, LET ME INQUIRE. HOW
22 MUCH MORE DO YOU BELIEVE YOU HAVE? I KNOW IT WOULD JUST
23 BE AN ESTIMATE. I INQUIRE BECAUSE IT'S 5:00 O'CLOCK.

24 MR. ROYSTER: JUDGE, I WILL BE HONEST, I HAVE
25 A FAIR AMOUNT BECAUSE I AM GOING TO GET INTO THE MNSOST-R

1 AND THAT MIGHT TAKE A LITTLE WHILE.

2 THE COURT: AND I AM SURE THE RESPONDENT IS
3 GOING TO WANT TO HAVE AN OPPORTUNITY AS WELL.

4 MR. ROYSTER: MAYBE 30 MINUTES.

5 THE COURT: WELL, I DON'T SEE US BEING ABLE TO
6 FINISH THIS WITNESS GIVEN THE TIME CONSTRAINTS THAT THE
7 COURT HAS AND THE COURT STAFF TODAY. I SAY THAT WITH
8 REGRET. WE ALL WISH WE COULD FINISH TODAY.

9 IN LIGHT OF THAT, I DON'T FRANKLY SEE MUCH
10 POINT IN GOING FURTHER TODAY. WE DO HAVE THE COURTROOM
11 FOR 9:00 O'CLOCK FOR MONDAY, STARTING AT 9:00 O'CLOCK.

12 BEFORE WE BREAK UP, I THINK WHAT -- WE'LL
13 CEASE WITH THE WITNESS FOR TODAY. MY IMPRESSION IS THAT
14 THIS NOTEBOOK AT THE WITNESS STAND DOES NOT -- MY
15 IMPRESSION IS DOESN'T CONTAIN RESPONDENT'S EXHIBITS, OR
16 AT LEAST NOT ALL OF THEM. I AM DIRECTING RESPONDENT'S
17 COUNSEL TO MAKE A DETERMINATION IF THAT IS TRUE, AND IF
18 THAT IS TRUE, TO GET THOSE EXHIBITS IN THERE.

19 MS. ALLEN: YES, YOUR HONOR, WE'LL DO THAT.

20 THE COURT: SO THEY WILL BE READY ON MONDAY
21 MORNING. I WOULD ALSO ASK RESPONDENT'S COUNSEL TO MAKE
22 SURE THEY HAVE A SET OF EXHIBITS THAT COINCIDES WITH THE
23 COURT'S EXHIBITS SO WE CAN GET AWAY FROM THIS BY
24 REFERRING BY DEPOSITION EXHIBITS THAT ARE, IN FACT, IN
25 THE EXHIBITS THAT HAVE BEEN PASSED UP THAT HAVE A

1 DIFFERENT IDENTIFICATION.

2 MS. ALLEN: WE'LL DO THAT, YOUR HONOR.

3 THE COURT: ARE THERE ANY OTHER HOUSEKEEPING
4 MATTERS BEFORE WE BREAK FOR THE WEEKEND?

5 MR. ROYSTER?

6 MR. ROYSTER: THE ONLY CONCERN I HAVE, JUDGE,
7 JUST TO MAKE THE COURT AWARE OF IT, IS DR. PHENIX'S LACK
8 OF ABILITY ON MONDAY AND WHETHER I WOULD WANT TO CALL HER
9 AS A REBUTTAL WITNESS, BUT I WILL THINK ABOUT THAT OVER
10 THE WEEKEND.

11 THE COURT: I DON'T KNOW HER SCHEDULE,
12 OBVIOUSLY, BUT ONE OPTION THAT CAN BE AVAILABLE IN CASES
13 LIKE THIS IS TELECONFERENCES. I DON'T KNOW IF WE HAVE
14 THAT CAPABILITY IN THIS COURTROOM. WE ACTUALLY MAY, BUT
15 I BELIEVE WE DO. AND I DON'T KNOW HER -- I DON'T KNOW
16 HER SCHEDULE, BUT THAT IS SOMETHING TO CONSIDER, MR.
17 ROYSTER.

18 MR. ROYSTER: THE OTHER CONCERN IS THAT, YOU
19 KNOW, FINISHING HIS TESTIMONY, THERE MAY BE SOMETHING IN
20 EITHER CROSS OR REDIRECT OR FROM THE COURT THAT I MAY
21 WANT TO PUT HER ON AS A REBUTTAL WITNESS, SO I WILL THINK
22 ABOUT HOW TO DEAL WITH THAT OVER THE WEEKEND. THANK YOU.
23 NOTHING ELSE.

24 THE COURT: OKAY. VERY GOOD, SIR. MR. ROSS,
25 MS. ALLEN, ANYTHING? MR. WATERS?

1 MR. ROSS: NO, WE DON'T HAVE ANYTHING AT THIS
2 POINT.

3 THE COURT: VERY GOOD. WE'LL BE IN RECESS
4 UNTIL 9:00 AM MONDAY MORNING.

5 (WHEREUPON, THE PROCEEDINGS WERE ADJOURNED.)
6
7
8
9

10 CERTIFICATE
11

12 THIS IS TO CERTIFY THAT THE FOREGOING
13 TRANSCRIPT OF PROCEEDINGS TAKEN IN THE UNITED STATES
14 DISTRICT COURT IS A TRUE AND ACCURATE TRANSCRIPTION OF
15 THE SHORTHAND NOTES OF THE PROCEEDINGS TAKEN BY ME IN
16 MACHINE SHORTHAND AND TRANSCRIBED BY COMPUTER UNDER MY
17 SUPERVISION.

18 DATED THIS 10TH DAY OF DECEMBER, 2011.
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21 /S/ SHARON K. KROEGER
22 COURT REPORTER
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